United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

Docket 75-4138 No. 75-4138

IN THE United States Court of Appeals For the Second Circuit

GERALD F. PADUANO and CAROLINE PADUANO,

ROCCO M. CAPPUCCILLI and DOROTHY CAPPUCCILLI,

PETER L. CAPPUCCILLI and GRACE A. CAPPUCCILLI,

Petitioners-Appellants,

-vs.-

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

On Appeal from the United States Tax Court

APPENDIX FOR PETITIONERS - APPELLANTS

VICTOR CHINI, ESQ.

Attorney for Petitioners-Appellants
Office and Post Office Address
811 State Tower Building
Syracuse, New York 13202

Daily Record Corporation Rochester, New York

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Spaulding Law Printing Syracuse, New York



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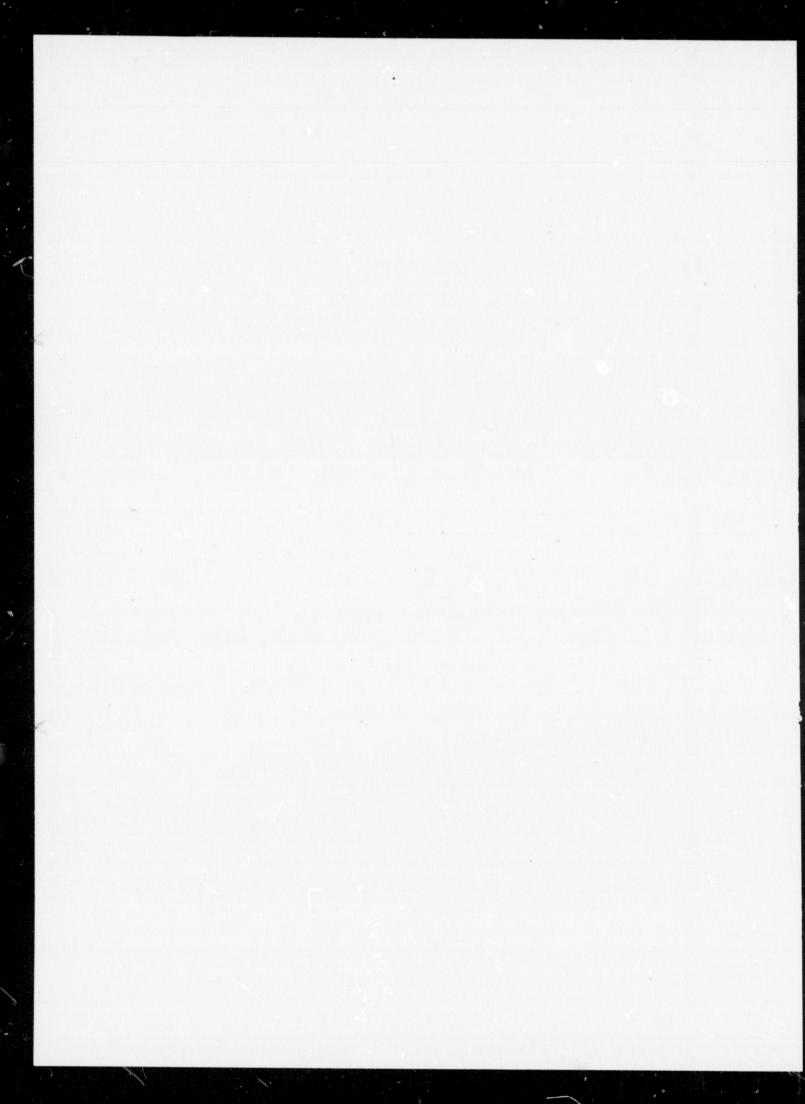
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	ship	108	109
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	consent	108	109
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DOCKET ENTRY

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

UNITED STATES TAX COURT GENERAL DOCKET

				DOCKET NO.	- 100 12
GERALD F.	. PA	DUANO AND CAROLINE PADUANO	Victor Chini, Syracuse, New	811 State To	ower Building
201 Maria Syracuse,		rive , York 13219 PETITIONER,	ADDRESS		
COMMISSIONER	R OF	VS. INTERNAL REVENUE,			
D		RESPONDENT.		T	
Month Day 1	Year	Filings and Proceed	ings	Action	Served
Sep. 11, 1	972	PETITION FILED: FEE PAID Sep.	11, 1972		Sep. 19, 1972
Hov. 10, 19	972	ANSWER filed by Tesp			Hov. 1h, 1972
Nov. 10, 19	972	DEFFUIST by Resp for trial at B	uffalo, New York	GPANTED Nov. 14, 197	Nov. 1h, 1972
June 8, 1	1973	NOTICE OF TRIAL on Sept. 1	7, 1973 at Buffalo,	NY.	June 8, 1973
		NOTICE OF CHANGE OF TRIAL DATE			Sept. 10, 197
Sept.18,197	3	HEARING at Buffalo, N. Y. before	e Judge Fay		
		Case continued for trial on (
		New York, N. Y.			
Sept. 18 ,19	73	ORDER, that case is set for tria	al on Oct. 1, 1973 at		Sept. 21,1973
		New York, N. Y., time 1:00 P.	. м.		
Oct. 1,19	73	TRIAL at New York, N.Y. befo	re Judge Fay.		
		Jt. Motion to consolidate	7168-72, 7169-72 &	١,	
		7103-72 Filed and Granted			OCT 9 1973
		STIPULATION OF FACTS with	att.Exh. filed.		
		ORIGINAL BRIEFS DUE - Nov	30 ,1973		
		REPLY BRIEFS DUE - Jan. 7	,1974 .		
		SUBMITTED TO JUDGE	FAY		
Oct. 17, 197	73	TRANSCRIPT of Oct. 1, 1973 rec'd	1.		
Nov. 26, 19	73	MOTION by Petr. to correct trans	cript. (No Obj. Resp)	GRANTED Nov. 29, 1973	NOV 3 0 1973
		continued on na	mp 2		

Docket Entry (Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

DOCKET NO. 7103-72

DOCKET NO.	(Continuation)		
GERALD F. PAI	DUANO AND CAROLINE PADUANO, PET	ITIONER	PAGE 2
Date Month Day Year	Filings and Proceedings	Action	Served
	BRIEF for Petr. filed.		DED 3 1073
Nov. 30,1973	BRIEF for Resp. filed.		DEC 3 1973
Dec. 31, 1973	REPLY BRIEF for Petitioners filed.		Jan. 8, 1974
	REPLY BRIEF for Resp. filed .		Jan. 8, 1974
	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Fay.		MAR 2 0 1975
	Decision will be entered for the Respondent.		1
Apr.1,1975	DECISION ENTERED, Judge Fay.		Apr.1,1975
	APPELIATE PROCEEDINGS		
June 17, 1975	ORDER fixing amount of bond at \$43,918.77 upon informal		
	request of counsel for petitioners.		June 17, 1975
July 1, 1975	NOTICE OF APPEAL to U.S.C.A., Second Circuit, filed by Pet	rs.	July 2, 1975
July 1, 1975	NOTICE of Filing with copy of notice of appeal sent		
	to Mr. Meade Whitaker, Chief Counsel.		July 2, 1975
July 1, 1975	NOTICE, to parties, of assembling and date for trans-		
	mission of the record.		July 2, 1975
		•	

DOCKET ENTRY (Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

UNITED STATES TAX COURT GENERAL DOCKET

			DOCKET NO.	7168-72
CAPPUCCILLI	PUCCILLI AND DOROTHY	APPEARANCES FOR PETITION Victor Chini, 83 NAME Syracuse, New You	ll State Tow	er Building,
109 Rockwood Syracuse, New	Y York 13215 PETITIONER,	ADDRESS		
	VS.			
COMMISSIONER OF	INTERNAL REVENUE, RESPONDENT.			
Date Month Day Year	Filings and Proceed	ngs	Action	Served
Sep. 12, 1972	PETITION FILED: FEE PAID Sep.	12, 1972		Sep. 20, 1972
Hev. 10, 1972	ALSWER filed by Resp			Hov. 11, 1972
Fov. 10, 1972	REQUIST by Resp for trial at I	ruffalo, New York	GRANTED Cov. 11, 1972	Mov. 1h, 1972
June 8, 1973	NOTICE OF TRIAL on Sept. 1	7, 1973 at Buffalo,	NY.	June 8, 1973
Sept. 10,1973	NOTICE OF CHANGE OF TRIAL DATE t	o Sept. 18, 1973.		Sept. 10, 1973
Sept. 18,1973	HEARING at Buffalo, N. Y. before	Judge Fay		
	Case continued for trial on	Oct. 1, 1973 at		
	New York, N. Y.			
Sept. 18, 197	ORDER, that case is set for tri	al on Oct. 1, 1973 at		Sept. 21,1973
	New York, N. Y., time 1;00 F	.M.		
Oct. 1,1973	TRIAL at New York, N.Y. before Jt. /Motion - to consolidate 7169-72 & 7103-72. STIPULATION OF FACTS with	Filed & :/Granted (7168-72 ,		ост 9 1973
	ORIGINAL BRIEFS DUE - Nov.	30 ,1973		
	REPLY BRIEFS DUE - Jan. 7,	.1974.		
	SUBMITTED TO JUDG	E FAY		
Oct. 17, 1973	TRANSCRIPT of Oct. 1, 1973 Recei	ved	GD AND ETD	
Nov. 26, 1973	MOTION by Petr. to correct tran	script. (NO Obj. Resp.)	GRANTED Nov. 29, 1973	NOY 3 0 1973
Nov. 29,1973	BRIEF for Petr. filed.			DEC 3 1973
Nov. 30, 1973	BRIEF for Resp. filed.			
	(Continued to page	(e 2)		May 1970

Docket Entry (Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

DOCKET NO. _____7168-72

(Continuation)

	(Continuation)		
ROCCO M. CAPPI	UCCILLI AND DOROTHY CAPPUCCILLI	PETITIONER	PAGE 2
Date Month Day Year	Filings and Proceedings (JUDGE FAY)	Action	Served
Dec. 31, 1973	REPLY BRIEF for Petitioners filed:		JAN 8 1974
Jan.7,1974	REPLY BRIEF for Resp. filed.		JAN 8 1974
March 20, 1975	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Fa	у.	MAR 2 0 1975
	Decision will be entered for the Respondent.		
Apr.1,1975	DECISION ENTERED, Judge Fay.		Apr.1,1975
	APPELLATE PROCEEDINGS		
June 17, 1975	ORDER fixing amount of bond at \$42,305.63, upon		
	informal request of counsel for petitioners.		June 17, 1975
July 1, 1975	NOTICE OF APPEAL to U.S.C.A., Second Circuit, filed by	Petrs.	July 2, 1975
July 1, 1975	NOTICE of Filing with copy of notice of appeal sent	pa-	
	to Mr. Meade Whitaker, Chief Counsel.		July 2, 1975
July 1, 1975	NOTICE, to parties, of assembling and date for trans-		
	mission of the record.		July 2, 1975
			9
			•
	•		

DOCKET ENTRY

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

UNITED STATES TAX COURT GENERAL DOCKET

7169-72

DOCKET NO.

PETER L. CAPI	PUCCILLI AND GRACE A.	Victor Chini, 8 Syracuse, New Y	311 State Tov	wer Building,
105 Norma Roa	v York 13219 PETITIONER,	ADDRESS	011 13202	
	VS.			
COMMISSIONER OF	INTERNAL REVENUE, RESPONDENT.			
Date Month Day Year	Filings and Proceeds	ings	Action	Served
Sep. 12, 1972	PETITION FILED: FEE PAID Sep. 1	2, 1972		Sep. 20,1972
"ov. 10, 1072	A"SWED filed by Tesp			"cv. 11, 1972
Tev. 10, 1972	•	offalo, NY	CTANTED Nov. 11, 1972	"ov. 1). 1072
June 8, 1973	NOTICE OF TRIAL on Sept. 1	7, 1973 at Buffalo,	NY.	June 8, 1973
Sept. 10,1973	NOTICE OF CHANGE of TRIAL DATE	to Sept. 18, 1973.		Sept. 10, 1973
Sept. 18, 1973	HEARING at Buffalo, N. Y. before	Judge Fay		
	Case continued for trial on	Oct. 1, 1973 at		
	New York, N. Y.			
Sept. 18, 1973	ORDER, that case is set for tria	al on Oct. 1, 1973 at		Sept. 21,1973
	New York, N. Y., time 1:00 F	P. M.		
Oct. 1,1973	TRIAL at New York, N.Y. before	ore Judge Fay.		
	Jt. Motion to consolidate	7168-72,7169-72 &		
	7103-72 filed and grante	ed.		OCT 9 1973
	STIPULATION OF FACTS with	Att.Exh. filed.		
	ORIGINAL BRIEFS DUE - Nov.	30 ,1973		
	REPLY BRIEFS DUE - Jan 7,	1974		
	SUBMITTED TO JUI	OGE FAY.		
Oct. 17, 1973	TRANSCRIPT of Oct. 1, 1973 rec'	d.		
Nov. 26, 1973	MOTION by Petr. to correct trans	script. (No Obj. Resp.)	GRANTED Nov. 29, 1973	NOV 3 0 1973
Nov. 29,1973	BRIEF for Petr. filed.			Dec. 3, 1973
	(Continued to page	(e 2)		ay 1970

Docket Entry (Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

DOCKET NO. ___7169-72

(Continuation)

PETER I CARDI	UCCILLI AND GRACE A. CAPPUCCILLI P	ETITIONER	PAGE 2
Date Month Day Year	Filings and Proceedings (JUDJE FAY)	Action	Served
Nov.30, 1973	BRIEF for Resp. filed REPLY BRIEF for Petitioners filed.		Dec. 3, 1973 Jan. 8, 1974
Jan.7,1974	REPLY BRIEF for Resp. filed.		JAN 8 1974
March 20, 1975	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Fay.		MAR 2 0 1975
	Decision will be entered for the Respondent.		
Apr.1,1975	DECISION ENTERED, Judge Fry.		Apr.1,1975
	APPELLATE PROCEEDINGS		
June 17, 1975	ORDER fixing amount of bond at \$41,165.72, upon		
	informal request of counsel for petitioners.		June 17, 1975
July 1, 1975	NOTICE OF APPEAL to U.S.C.A., Second Circuit, filed by Pe	etrs.	July 2, 1975
July 1, 1975	NOTICE of Filing with copy of notice of appeal sent		
	to Mr. Meade Whitaker, Chief Counsel.		July 2, 1975
July 1, 1975	NOTICE, to parties, of assembling and date for trans-		
	mission of the record.		July 2, 1975
-			
			. '

PETITION

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

TAX COURT OF THE UNITED STATES

GERALD F. PADUANO and CAROLINE PADUANO,

Petitioners,

-VS-

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No.

PETITION

The above named Petitioners Thereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, (Internal Revenue Service Symbols AP:FUF:RJL:MJB) dated June 22, 1972, and as a basis of their case allege as follows:

1. The Petitioners are husband and wife residing at 201 Marian Drive, Syracuse, New York 13219. The Tax returns for the years 1967, 1968, and 1969 were filed by the Petitioners with the District Director of Internal Revenue, Buffalo, New York and/or Andover, Massachusetts.

Petition

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

- 2. The notice of deficiency dated June 22, 1972 (a copy of which is attached hereto and marked Exhibit A) was mailed to the Petitioners on June 22, 1972.
- 3. The deficiencies as determined by the Commissioner are in personal income taxes of \$11,061.91 for
 the taxable year ended December 31, 1967, \$8881.62 for the
 taxable year ended December 31,1968, and \$8824.21 for the
 taxable year ended December 31, 1969. All of said deficiencies are in dispute.
- 4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:
- (a) The commissioner erroneously included additional partnership income to Petitioners of \$23,142.83 for the year ended December 31, 1967.
- (b) The Commissioner erroneously included additional partnerhsip income to Petitione of \$22,711.64 for the year ended December 31, 1968.
- (c) The Commissioner erroneously included additional partnership income to Petitioners of \$21,356.77 for the year ended December 31, 1969.
- (d) With respect to the additional partnership income included in Petitioners' income for the years 1967, 1968, and 1969, the Commissioner erroneously imputed interest income under Regs. 1.482-2(d) to Cappuccilli, Capuccilli and Paduano (a partnership in which Gerald F. Paduano had a one-third interest) from various advances and mortgages which

Petition (Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

were made to Seneca Sewerage Corporation, Stonehedge Development Corporation and Cappy's Real Estate Inc.

- 5. The facts upon which the Petitioners rely as a basis of this proceeding are as follows:
- (a) Prior to January 1,1962 and through the tax periods involved in this proceeding, Gerald F. Paduano was a partner in the firm of Cappuccilli, Cappuccilli and Paduano, having a one-third interest.
- (b) On or about January 1, 1962, the partnership,
 Cappuccilli, Cappuccilli and Paduano, sold certain real estate
 to Stonehedge Development Corporation. In connection with that
 sale the partnership took back a purchase money mortgage in the
 amount of \$1,075,000.00, which mortgage was non-interest bearing.
- (c) On or about April 6, 1961, the partnerhsip, Cappuccilli, Cappuccilli and Paduano, sold certain real estate
 to Seneca Sewerage Corporation. In connection with that sale
 the partnership took back a purchase money mortgage in the
 amount of \$25,000.00, which mortgage bore six (6%) per cent
 interest.
- (d) From time to time the partnership, Cappuccilli, Cappuccilli and Paduano, advanced various sums to Stonehedge Development Corporation and to Cappy's Real Estate Inc.; such advances did not bear interest.

Petition (Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

(e) The gross income, net income and taxable income for Cappy's Real Estate Inc., Stonehedge Development Corporation and Seneca Sewerage Corporation for 1967, 1968, and 1969 are as follows:

Cappy's Real Estate Inc.	Gross	Net	Taxable
	Income	Income	Income
1967	\$110,317.52	\$4,245.96	\$4,245.96
1968	107,854.74	1,848.00	-0-
1969	52,473.38	2,906.06	2,906.06
Stonehedge Development Co	\$282,885.57	\$ 2,835.09	\$ 2,835.09
	158,246.60	(57,780.03)	(57,780.03)
	6,113.39	(113,117.10)	(113,177.10)
<u>Seneca Sewerage Corp.</u> 6-30-67 6-30-68 6-30-69	\$16,276.65	\$ 9,329.52	\$ 9,329.52
	27,468.00	2,116.92	-0-
	43,936.00	20,848.60	-0-

(f) The determination of the Commissioner that interest should be imputed to the partnership, Cappuccilli, Cappuccilli, and Paduano, is arbitrary.

WHEREFORE, the Petitioners pray that this Court may hear the proceeding and:

- Determine that the Commissioner erred as alledged
 in each assignment of error set forth in paragraph 4. hereinabove.
- 2. Find that there is no deficiency in income tax for the calendar years 1967, 1968, and 1969.

Petition (Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

3. Give such other and further relief as in the premises the Court may deem fit and proper.

VICTOR CHINI Attorney-at-Law 811 State Tower Building Syracuse, New York 13202

Petition

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

STATE OF NEW YORK)
) SS:
COUNTY OF ONONDAGA)

6

CAROLINE PADUANO, being duly sworn, says that she is one of the petitioners above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

Caroline Paduano

Subscribed and sworn to before me this \mathcal{S}^{μ} day of September, 1972.

Notary Public

LOTTE FUSCO clother Politic in the State of New York Qualified in Operal to Co. No. 673525 My Commission Explore March 30, 1074

13

Petition

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

STATE OF NEW YORK)
) SS:
COUNTY OF ONONDAGA)

GERALD F. PADUANO, being duly sworn, says that he is one of the petitioners above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

Gerald F. Paduano

Subscribed and sworn to before me this Jack day of September, 1972.

Notary Public

LOTTE FUSCO

Notery Public in the frue of New York

Quelified in Orandega Co. No. 6435525

My Commission Expires March 30, 1974

Exhibit A — Notice of Deficiency, dated 6-22-72 attached to Petition.

Exhibit A

Department of the Treasury
Regional Commissioner

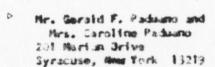
Internal Revenue Service

North-Atlantic Region

JUN 2 2 1972

*1865: 13LI'UE

In reply refer to



Jone Mr. and Mrs. Paduatros

Tax Year Ended Jocomber 31, 1967

Jecember 31, 1968 December 31, 1969 Deficiency

8,321.62

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case

Exhibit A — Notice of Deficiency, dated 6-22-72 attached to Petition.

may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000 for any one taxable year. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours.
Johnnie M. Walters
Commissioner
By

Enclosures: Waiver, Form 870 Statement Envelope

(Signed) Robert J. Lyden

Appellate Conferen Appellate Switch Office

Exhibit A - Notice of Deficiency, dated 6-22-72 attached to Petition.

	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE	SYMBOLS
FORM 4089 (JANUARY 1966)	STATUTORY NOTICE STATEMENT	VP:BUF: RUL: HUS

Mr. Serald F. Paduano ind Mrs. Caroline Paluano 201 Marion Orive Syracuse, New York 13219

KIND OF TAX		
	Income	
TAXABLE YEAR ENDED	DEFICIENCY	
December 31, 1967 December 31, 1963 December 31, 1969	\$11,061.91 3,381.62 8,824.21	
Total	\$23,767.74	

Copy to Authorized Representative:	Victor Chini 311 State Tower Building Syracuse, New York 13202	
		508H 4089 (1-66

	RN. 3611 MAR. 1970)	INDIVIDUAL I	NCOME TAX	STATE	STATEMENT SCHEDULE	
AME .			TAXABLE YEARS ENDED			
Seral	d F. and Car	roline Paduano	12/31/67	12/31/63	12/31/63	
	INCOME OR ADAL	ISTED GROSS INCOME AS				
	RETURN AS FILE					
	STATUTORY NOT	ICE DATED	\$33,112.93	\$15,303.05	\$16,273.77	
	ES (DECREASES) on of items)	N INCOME: (See attached	-			
(a)	Partnership	incoma	23,142.33	22,711.64	21,356.77	
	E INCOME AS REVI		56,255.76	33,520.29	38,350.76	
	TAX		20,189.34	11,474.13	11,397.84	
	TAX SURCHARGE			860.56	1,139.78	
	· · · · · · · · · · · · · · · · · · ·					
1	TAX PLUS SURCH	ARGE	20,189.34	12,334.69	12,537.62	
			20,189.34	12,334.69	12,537.62	
NOI	TAX PLUS SURCH		20,189.34	12,334.69	12,537.62	
JTATION	TAX PLUS SURCH	its .		12,334.69		
OMPUTATION	TAX PLUS SURCH LESS: TAX CRED INVEST SUBTOTAL ADD:	ment credit	99.75			
> 1	TAX PLUS SURCH LESS: TAX CRED INVES SUBTOTAL ADD: SELF-EMPL	ment credit OYMENT TAX	99.75		12,537.62	
TAX COMPUTATION	TAX PLUS SURCH LESS: TAX CRED INVES SUBTOTAL ADD: SELF-EMPL	ment credit	99.75			
TAX COMPUTATION	TAX PLUS SURCH LESS: TAX CRED INVESTMENT TAX FROM INVESTMENT	OYMENT TAX RECOMPUTING PRIOR YEAR T CREDIT (Schedule 3)	99.75 20,089.59	12,334.69	12,537.62	
TAX COMPUTATION	TAX PLUS SURCH LESS: TAX CRED INVEST SUBTOTAL ADD: SELF-EMPL TAX FROM INVESTMEN TAX LIABILITY	OYMENT TAX RECOMPUTING PRIOR YEAR T CREDIT (Schedule 3)	99.75 20,089.59	12,334.69	12,537.62	

Exhibit A — Notice of Deficiency, dated 6-22-72 attached to Petition.

FORM 886-A (REV APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER		YEAR PERIOD ENDED
Gerald F. and Caroline Pa	duana	12/31/6/

(a) In the calendar year 1967 the partnership Cappuccilli, Cappuccilli & Paduano had outstanding mortgages receivable from Stonehodge Development Corporation and Seneca Sewerage Corporation, and advances due from Stonehodge Development Corporation and Cappys Real Estate, Inc., on which no interest was charged. Under the authority of Regulations 1.482-2(a) an adjustment is made to reflect an arm's length interest charge for the use of such money. The principal amounts involved and the interest computed thereon at the rate of five percent per annum are as follows:

Mortgage-Stonehedge Development Corp.	Principal \$1,122,350	7a te	\$50,142.50
Mortgage-Seneca Seworage Corp.	25,000	5.00%	1,250.00
idvances-Stonehedge Development Corp.	130,850	2.48%	4,435.08
William To The Control of the Contro	165,200	1.21%	1,398.92
	160,200	.31%	1,297.62
	117,700	.50%	533.50
	1,800	4.864	37.48
	6,500	4.77%	310.05
	3,500	4.37%	152.95
	2,000	4.19%	53.93
	2,000	4.35%	31.00
	5,000	3.77%	133.50
	11,000	3.59%	334.40
	500	3.36%	15.80
	2,000	2.15%	55.00
	500	2.73%	13.65
	1,000	2.04%	20.40
	5,000	1.93%	95.33
	5,000	1.75%	37.50
	3,000	1.678	50.10
	2,000	1.52%	30.40
	6,000	1.47%	33.20
	11,500	1.32%	151.80
	5,000	1.17%	58.50
	4,000	1.07%	42.80
	3,000	.977	27.90
	4,000	. 55 ~	34.00
	3,000	.73%	21.90
	6,000	.70%	42.00
	8,000	.324	25.60
	3,000	.076	2.10
Www.ces-Cappys Real Estate	32,400	2.93%	347.37
Anadrea - cabina was caree	27,400	.486	131.52
	15,333	1.23%	194.5
	9,000	. 346	30.60
	1,000	4.33%	43.00
	3,000	4.186	125.4
	1,000	3.92%	33.2
Total Interest	.,		\$69,423.49

Total Interest

One-third of this \$69,428.49 total, or \$23,142.33, is distributable to Gerald F. Paduano as one of the three equal partners of that partnership.

Exhibit A — Notice of Deficiency, dated 6-22-72 attached to Petition.

FORM 886-A (REV APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
Serald F. and Caroline Fadu	ano	12/31/69

(a) In the calendar year 1968 the partnership Cappuccilli, Cappuccilli & Paduano had outstanding mortgages receivable from 5t menadge Development Corporation and Senaca Senarage Corporation, and advances due from Stonehedge Development Corporation, on which no interest was charged. Onder the methority of Regulations 1,482-7(a) an adjustment is made to reflect an arm's length interest charge for the use of such money. The principal amounts involved and the interest computed theraon at the rate of five percent per annum arm as follows:

	Principal	Rate	Interest
Mortgage-Stanehedge Development Corp.	\$1,122,850.00	5.50%	\$55,142.50
Mortgage-Senaca Sewerage Corp.	25.000.00	5.00%	1,250.00
Wances-Stonehedge Sevelopment Corp.	221,000.00	1.34%	2,961.40
	217,530.00	2.25%	4, 933.75
	207,500.00	.20%	415.33
	199,800.00	.92%	1,746.16
	154,493.75	.47%	725.12
Total Interest			\$63,134.23

One-third of this \$68,134.93 total, or \$22,711.64, is distributable to Gerald F. Paduano as one of the three equal partners of that partnership.

(a) In the calendar year 1969 the partnership Capouccilli, Capouccilli 5 Paduano had outstanding mortgages receivable from Stonehedge Development Corporation and Sense:
Sewerage Corporation, and advences due from Stonehedge Development Corporation, on which no interest was charged. Under the authority of Regulations 1.482-2(a) an adjustment is made to reflect an arm's length interest charge for the use of such money. The principal amounts involved and the interest computed thereon at the rate of five percent per annual are as follows:

	Principal	Rate	Interest
Mortgage-Stonehodge Development Corp.	\$1,122,850.00	5.00%	\$56,142.50
Mortgage-Seneca Sewerage Corp.	25,000.00	5.00%	1,250.00
Advances-Stonahedge Development Corp.	154,493.75	1.52%	2,348.31
	150,000.00	.476	705.00
	125,000.00	.25%	312.50
	120,000.00	2.76%	3,312.00
Total interest			\$64,373.31

One-third of this \$64,370.31 total, or \$21,356.77, is distributable to Gerald F. Paduano as one of the three equal partners of that partnership.

Recapture of Prior Years Investment Cradit

Since the assets were held for less than four years, the investment credit claimed for 1966 and 1967 in the respective amounts of \$78.99 and \$99.75 is receptured.

$\begin{array}{c} {\rm Exhibit} \; A-{\rm Notice} \; {\rm of} \; {\rm Deficiency, \, dated} \; 6\text{-}22\text{-}72 \\ {\rm attached} \; {\rm to} \; {\rm Petition}. \end{array}$

FORM 3612 (TRANSLUCENT) (JULY 1963)	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE INDIVIDUAL ALTERNATIVE TAX COMPUTATION			AUDIT STATEMENT SCHEDULE		
TAXABLE INCOME AS REVISED, SCHEDULE LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAINS OVER NET SHORT-TERM CAPITAL LOSS ORDINARY INCOME		TAXABLE YEARS				
			12/31/67			
		\$	56,255.76	\$	\$	
		t	12,329.11			
		\$	43,926.65	\$	s	
PARTIAL TAX		\$	14,024.79	\$	\$	
	OF NET LONG-TERM CAPITAL SHORT-TERM CAPITAL LOSS		6,164.55			
INCOME TAX, ALTERNA	ATIVE METHOD	\$	20,139.34	\$	\$	
INCOME TAX, REGULAR METHOD		\$	20,315.55	\$	\$	

906-685

U.S. GOVERNMENT PRINTING OFFICE 1965 0-108-156

ANSWER

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

UNITED STATES TAX COURT

GERALD F. PADUANO and
CAROLINE PADUANO,

Petitioners,

V.

Docket No. 7103-72

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

- 1. Admits the allegations of paragraph 1. of the petition, except denies that the tax returns for the taxable years 1967, 1968 and 1969 were filed at Andover, Massachusetts.
- and 3. Admits the allegations of paragraphs 2.
 and 3. of the petition.
- 4. (a) through (d), inclusive. Denies the allegations of error of subparagraphs (a) through (d), inclusive, of paragraph 4. of the petition.
- 5. (a). Admits the allegations of subparagraph(a) of paragraph 5. of the petition.
- 5. (b). Admits that on or about April 6, 1962, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Stonehedge Development

Answer

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

Corporation and that in connection with that sale the partnership took back a purchase money mortgage; denies the remaining allegations of subparagraph (b) of paragraph 5. of the petition.

- 5. (c). Admits that on or about April 6, 1961, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Seneca Sewerage Corporation and took back a purchase money mortgage; denies the remaining allegations of subparagraph (c) of paragraph 5. of the petition.
- 5. (d). Admits that from time to time the partner-ship, Cappuccilli, Cappuccilli and Paduano, advanced various sums to Stonehedge Development Corporation and to Cappy's Real Estate, Inc.; denies the remaining allegations of subparagraph (d) of paragraph 5. of the petition.
- 5. (e) and (f). Denies the allegations of subparagraphs (e) and (f) of paragraph 5. of the petition.
- 6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

Answer

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

(Sgd) Lee H. Henkel, Jr., - SMM LEE H. HENKEL, JR. Chief Counsel Internal Revenue Service

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel
DOUGLAS K. COOK
Attorney
Internal Revenue Service
306 U. S. Courthouse
Niagara Square
Buffalo, New York 14202

PETITION

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

TAX COURT OF THE UNITED STATES

ROCCO M. CAPPUCCILLI and DOROTHY CAPPUCCILLI, Petitioners,

Docket No.

-VS-

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION

The above named Petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, (Internal Revenue Service Symbols AP:PUF: RJL:MJB) dated Jame 22, 1972, and as a basis of their case allege as follows:

- 1. The Petitioners are husband and wife residing at 109 Rockwood, Syracuse, New York 13215. The Tax returns for the years 1967, 1968, and 1969 were filed by the Petitioners with the District Director of Internal Revenue, Buffalo, New York and/or Andover, Massachusetts.
- 2. The notice of deficiency dated June 22, 1972 (a copy of which is attached hereto and marked Exhibit A) was mailed to the Petitioners on June 22, 1972.

Petition

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

- 3. The deficiencies as determined by the Commissioner are in personal income taxes of \$10553.54 for the taxable year ended December 31, 1967, \$9217.04 for the taxable year ended December 31,1968, and \$7921.75 for the taxable year ended December 31, 1969. All of said deficiencies are in dispute.
- 4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:
- (a) The Commissioner erroneously included additional partnership income to Petitioners of \$23,142.83 for the year ended December 31, 1967.
- (b) The Commissioner erroneously included additional partnerhsip income to Petitioners of \$22,711.64 for the year ended December 31, 1969.
- (c) The Commissioner erroneously included additional partnership income to Petitioners of \$21,356.77 for the year ended December 31, 1969.
- (d) With respect to the additional partnership income included in Petitioners' income for the years 1967, 1968 and 1969, the Commissioner erroneously imputed interest income under Regs. 1.482-2(d) to Cappuccilli, Cappuccilli and Paduano (a partnership in which Rocco M. Cappuccilli had a one-third interest) from various advances and mortgages which were made to Seneca Sewerage Corporation, Stonehedge Development Corporation and Cappy's Real Estate Inc.

Petition

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

- 5. The facts upon which the Petitioners rely as a basis of this proceeding are as follows:
- (a) Prior to January 1, 1962 and through the tax periods involved in this proceeding, Rocco M. Cappuccilli was a partner in the firm of Cappuccilli, Cappuccilli, and Paduano, having a one-third interest.
- (b) On or about January 1, 1962, the partnership, Cappuccilli, Cappuccilli, and Paduano, sold certain real estate
 to Stonehedge Development Corporation. In connection with that
 sale the partnership took back a purchase money mortgage in
 the amount of \$1,075,000.00, which mortgage was non-interest
 bearing.
- (c) On or about April 6, 1961, the partnership, Cappuccilli, Cappuccilli, and Paduano, sold certain real estate to Seneca Sewerage Corporation. In connection with that sale the partnership took back a purchase money mortgage in the amount of \$25,000.00, which mortgage bore six (6%) per cent interest.
- (d) From time to time the partnership, Cappuccilli, Cappuccilli, and Paduano, advanced various sums to Stonehedge

 Development Corporation and to Cappy's Real Estate Inc.; such advances did not bear interest
- (e) The gross income, net income and taxable income for Cappy's Real Estate Inc., Stonehedge Development Corporation and Seneca Sewerage Corporation for 1967, 1968, and 1969 are as follows:

Petition
(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

Cappula Boal Estata Tas	Gross Income	Net Income	Taxable Income
Cappy's Real Estate Inc. 1967 1968 1969	\$110,317.52 107,854.74 52,473.38	\$4,245.96 1,848.00 2,906.06	\$4,245.96 -0- 2,906.06
Stonehedge Development C	orp.		
1967 1968	\$282,885.57	\$2,835.09	\$2,835.09
1969	158,246.60 6,113.39	(57,780.03) (113,177.10)	(57,780.03) (113,177.10)
Seneca Sewerage Corp.			
6-30-67 6-30-68	\$16,276.65 27,468.00	\$9,329.52 2,116.92	\$9,329.52 -0-
6-30-69	43,936.00	20,848.60	-0-

(f) The determination of the Commissioner that interest should be imputed to the partnership, Cappuccilli, Cappuccilli and Paduano, is arbitrary.

WHEREFORE, the Petitioners pray that this Court hear the proceeding and:

- 1. Determine that the Commissioner erred as alledged in each assignment of error set forth in paragraph 4. hereinabove.
- 2. Find that there is no difficiency in income tax for the calendar years 1967, 1968, 1969.
- 3. Give such other and further relief as in the premises the Court may deem fit and proper.

VICTOR CHINI Attorney-at-law 811 State Tower Building Syracuse, New York 13202

28

Petition

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

STATE OF NEW YORK)
COUNTY OF ONONDAGA)

DOROTHY CAPPUCCILLI, being duly sworn, says that she is one of the petitioners above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

Dorothy Cappuccilli

Subscribed and sworn to before me this day of September, 1972.

Notary Public

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

STATE OF NEW YORK)
) SS:
COUNTY OF ONONDAGA)

ROCCO M. CAPPUCCILLI, being duly sworn, says that he is one of the petitioners above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

Dorothy Cappuccilli

Subscribed and sworn to before me this day of September, 1972.

Notary Public

Exhibit A

viusant of the iteasury . 7. C.DECY . . . art street Regional Commissioner

Internal Revenue Service

North-Atlantic Region

in reply refer to:

JUN 22 1972 CHEST CALLS

D Mr. Arcco M. Cappacolili and Mrs. Perothy Cappecellis 109 Sourcesout Board Lyraduse. New York 13215

Dear fire and fire. Coppacifile

Tax Year Ended Deficiency Decrebor 31, 1367 \$17.551.54 Deserver 31, 1963 9,211000 Journales 31, 1963 7.321.75

This letter is to notify you--as required by law--that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case

may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000 for any one taxable year. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours, Johnnie M. Walters Commissioner By

Enclosures: Waiver, Form 870 Statement Envelope

(Signed) Robert J. Lyden

Colors J. Lyden Appellate Conferme Appellate Branch Office

1000	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE	SYMBOLS
FORM 4089 (JANUARY 1966)	STATUTORY NOTICE STATEMENT	
		V:0071.00.000

Mrs. Rocco M. Cappaceilli and Mrs. Dorothy Cappaceilli 100 Rockwood Road Syrocuse, New York 13215

ND OF TAX	
	Incorp
TAXABLE YEAR ENDED	DEFICIENCY
6 31, 1067 6 31, 1003 7 31, 1003	\$10,553.54 9,217.04 -7.001.75
Total	\$27,692.33

Victor Chini 211 State Tower Pullation Syracuse, New York 19202

$\begin{array}{c} \text{Exhibit A} - \text{Notice of Deficiency, dated 6-22-72} \\ \text{attached to Petition.} \end{array}$

FORM 3611

INDIVIDUAL INCOME TAX

(REV. MAR. 197.)			1
ME		TAXABLE YEARS ENDED	
occo M. and Dorothy Cappuccilli	12/34/67	12/31/68	12/31/69
XABLE INCOME OR AQUUSTER GROSSINICOME AS			1,.,.,
RETURN AS FILED			
PRELIMINARY LETTER DATED			
STATUTORY NOTICE DATED	\$23,201.15	\$17,561.93	\$13,363.23
REASES (DECREASES) IN INCOME: (See attached anation of items)		! 	
o) Partmarahip Income	23,142.03	22,711.64	21,356.77
CABLE INCOME AS REVISED OR'S USTED GROSS, INCOME, AS REVISEDX	51,343.98	40,273.62	34,719.97
TAX	17,731.99	12,271.34	9,802.39
TAX SURCHARGE		920.35	980.24
TAX SURCHARGE		920.35 13,191.69	980.24
TAX PLUS SURCHARGE LESS: TAX CREDITS	4-		
TAX PLUS SURCHARGE LESS: TAX CREDITS	17,731.99	13,191.69	
TAX PLUS SURCHARGE LESS: TAX CREDITS SUBTOTAL ADD:	17,731.99		10,782.63
TAX PLUS SURCHARGE LESS: TAX CREDITS SUBTOTAL ADD: SELF-EMPLOYMENT TAX	17,731.99	13,191.69	10,782.63
TAX PLUS SURCHARGE LESS: TAX CREDITS SUBTOTAL ADD: SELF-EMPLOYMENT TAX	17,731.99	13,191.69	10,782.6
TAX PLUS SURCHARGE LESS: TAX CREDITS SUBTOTAL ADD: SELF-EMPLOYMENT TAX TAX FROM RECOMPUTING PRIOR YEAR	17,731.99	13,191.69	10,782.63
TAX PLUS SURCHARGE LESS: TAX CREDITS SUBTOTAL ADD: SELF-EMPLOYMENT TAX TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT		13,191.69	10,782.6
TAX PLUS SURCHARGE LESS: TAX CREDITS SUBTOTAL ADD: SELF-EMPLOYMENT TAX TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT TAX LIABILITY		13,191.69	10,782.6

FORM 886-A	EXP	ANATION OF ITEMS		SCHEDULE NO. OR
AME OF TAXPAYER	-/	THE TOTAL OF THE MS		2
				YEAR/PERIOD ENDE
co it. and breathy Co	2mxcilli			12/31/57
) In the calendar ye	ar 1967 the parent	arship Cappuccilli,	Cap, xuccilli 6	79 4 4 1
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		165,200	1.21%	1,297.02
		160.200	.815	1,227.62
		117,700	4.806	531.53
		6,500	4.71%	77.163
			1,37	310.05 152.05
		2,033	4.176	5.5
···········		2,000	4.09%	313
		5,000	3.77%	100.50
······································		11,000	3.5%	394.90
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FORM 886-A (REV APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Rocco M. and Dorothy Ca	ppuccilli	12/31/68 &

(a) In the calendar year 1968 the partnership Cappuccilli, Cappuccilli & Paduano had outstanding mortgages receivable from Stonehedge Development Corporation and Seneca Sewerage Corporation, and advances due from Stonehedge Development Corporation, on which no interest was charged. Under the authority of Regulations 1.482-2(a) an adjustment is made to reflect an arm's length interest charge for the use of such money. The principal amounts involved and the interest computed thereon at the rate of five percent per annum are as follows:

	Principal	Rate	Interest
Mortgage-Stonehedge Development Corp.	\$1,122,850.00	5.00%	\$56,142.50
Mortgage-Seneca Sewerage Corp.	25,000.00	5.00%	1,250.00
Advances-Stonehedge Development Corp.	221,000.00	.1.34%	2.961.40
	217,500.00	2.25%	4,893.75
	207,500.00	.20%	415.00
	189,800.00	.92%	1.746.16
	154,493.75	.47%	726.12
Total interest			\$68,134,93

One-third of this \$68,134.93 total, or \$22,711.64, is distributable to Rocco M.
Cappuccilli as one of the three equal partners of that partnership.

(a) In the calendar year 1969 the partnership Cappuccilli, Cappuccilli & Paduano had outstanding mortgages receivable from Stonehedge Development Corporation and Seneca Severage Corporation, and advances due from Stonehedge Development Corporation, on which no interest was charged. Under the authority of Regulations 1.482-2(a) an adjustment is made to reflect an arm's length interest charge for the use of such money. The principal amounts involved and the interest computed thereon at the rate of five percent per annum are as follows:

	Principal Principal	Rate	Interest
Mortgage-Stonehedge Development Corp.	\$1,122,850.00	5.00%	\$56.142.50
Mortgage-Seneca Sewerage Corp.	25,000.00	5.00%	1.250.00
Advances-Stonehedge Development Corp.	154,493.75	1.52%	2,348.31
	150,000.00	.47%	705.00
	125,000.00	.25%	312.50
	120,000.00	2.76%	3.312.00
Total interest			\$64,070.31

One-third of this \$64,070.31 total, or \$21,356.77, is distributable to Rocco M.	
Cappuccilli as one of the three equal partners of that partnership.	• • • • • • • • • • • • • • • • • • • •

ANSWER

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

UNITED STATES TAX COURT

ROCCO M. CAPPUCCILLI and DOROTHY CAPPUCCILLI,

Petitioners,

37.

Docket No. 7168-72

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

- 1. Admits the allegations of paragraph 1. of the petition, except denies that the tax returns for the taxable years 1967, 1968 and 1969 were filed at Andover, Massachusetts.
- and 3. Admits the allegations of paragraphs 2.and 3. of the petition.
- 4. (a) through (d), inclusive. Denies the allegations of error of subparagraphs (a) through (d), inclusive, of paragraph 4. of the petition.
- 5. (a). Admits the allegations of subparagraph (a) of paragraph 5. of the petition.
- 5. (b). Admits that on or about April 6, 1962, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Stonehedge Development

Answer

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

Corporation and that in connection with that sale the partnership took back a purchase money mortgage; denies the remaining allegations of subparagraph (b) of paragraph 5. of the petition.

- 5. (c). Admits that on or about April 6, 1961, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Seneca Sewerage Corporation and took back a purchase money mortgage; denies the remaining allegations of subparagraph (c) of paragraph 5. of the petition.
- 5. (d). Admits that from time to time the partner-ship, Cappuccilli, Cappuccilli and Paduano, advanced various sums to Stonehedge Development Corporation and to Cappy's Real Estate, Inc.; denies the remaining allegations of subparagraph (d) of paragraph 5. of the petition.
- 5. (e) and (f). Denies the allegations of subparagraphs (e) and (f) of paragraph 5. of the petition.
- 6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

Answer

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

(Sad) Lee H. Henkel, Jr., SMM LEE H. HENKEL, JR. Chief Counsel Internal Revenue Service

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel
DOUGLAS K. COOK
Attorney
Internal Revenue Service
306 U. S. Courthouse
Niagara Square
Buffalo, New York 14202

PETITION

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

TAX COURT OF THE UNITED STATES

PETER L. CAPPUCCILLI and GRACE A. CAPPUCCILLI.

Petitioners,

- vs -

Docket No.

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION.

The above named Petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, (Internal Revenue Service Symbols AP: PUF: RJL: MJB) dated June 22, 1972, and as a basis of their case allege as follows:

1. The Petitioners are husband and wife residing at 105 Norma Road, Syracuse, New York 13219. The tax returns for the years 1967, 1968 and 1969 were filed by the Petitioners with the District Director of Internal Revenue, Buffalo, New York and/or Andover, Massachusetts.

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

- 2. The notice of deficiency dated June 22, 1972 (a copy of which is attached hereto and marked Exhibit A) was mailed to the Petitioners on June 22, 1972.
- . 3. The deficiencies as determined by the Commissioner are in personal income taxes of \$10,094.08 for the taxable year ended December 31, 1967, \$8,753.64 for the taxable year ended December 31, 1968, and \$8,121.65 for the taxable year ended December 31, 1969. All of said deficiencies are in dispute.
- 4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:
- (a) The Commissioner erroneously included additional partnership income to Petitioners of \$23,142.83 for the year ended December 31, 1967.
- (b) The Commissioner erroneously included additional partnership income to Petitioners of \$22,711.64 for the year ended December 31, 1968.
- (c) The Commissioner erroneously included additional partnership income to Petitioners of \$21.356.77 for the year ended December 31, 1969.
- (d) With respect to the additional partnership income included in Petitioners' income for the years 1967, 1968 and 1969, the Commissioner erroneously imputed interest income under Regs. 1.482-2(d) to Cappuccilli, Cappuccilli and Paduano (a partnership in which Peter L. Cappuccilli had a one-third interest) from various advances

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

and mortgages which were made to Seneca Sewerage Corporation. Stonehedge Development Corporation and Cappy's Real Estate Inc.

- (e) As a result of the adjustments to the Partnership's income by the Commissioner, medical expenses were disallowed based upon the increase in adjusted gross income for the years 1967, 1968 and 1969.
- 5. The facts upon which the Petitioners rely as a basis of this proceeding are as follows:
- (a) Prior to January 1, 1962 and through the tax periods involved in this proceeding, Peter L. Cappuccilli was a partner in the firm of Cappuccilli, Cappuccilli and raduano, having a one-third interest.
- (b) On or about January 1, 1962, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate so Stonehedge Development Corporation. In connection with that sale the partnership took back a purchase money mortgage in the amount of \$1.075,000.00, which mortgage was non-interest bearing.
- (c) On or about April 6, 1961, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Seneca Sewerage Corporation. In connection with that sale the partnership took back a purchase money mortgage in the amount of \$25,000.00, which mortgage bore six (6%) per cent interest.

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

- (d) From time to time the partnership, Cappuccilli, Cappuccilli and Paduano, advanced various sums to
 Stonehedge Development Corporation and to Cappy's Real Estate
 Inc.; such advances did not bear interest.
- (e) The gross income, net income and tar ble income for Cappy's Real Estate Inc., Stonehedge Development Corporation and Seneca Sewerage Corporation for 1967, 1968 and 1969 are as follows:

Cappy's Real Estate Inc.	Gross	Net	Taxable
	Income	Income	Income
1967	\$110,317.52	\$ 4,245.96	\$ 4,245.96
1968	107,854.74	1,848.00	-0-
1969	52,473.38	2,906.06	2,906.06
Stonehedge Development Co	ro.		
1967	\$282,885.57	(57,780.03)	\$ 2.835.09
1968	158,246.60		(57.780.03)
1969	6,113.39		(113.177.10)
Seneca Severage Corp.			
6-30-67	\$ 16.276.65	\$ 9,329.52	\$ 9,320.52
6-30-68	27.468.00	2,116.92	-0-
6-30-69	43.936.00	20,848.60	-0-

(f) The determination of the Commissioner that interest should be imputed to the partnership, Cappuccilli, Cappuccilli and Paduano, is arbitrary.

WHEREFORE, the Petitioners pray that this Court may

 $\label{eq:complex} \mbox{(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).}$ hear the proceeding and:

- 1. Determine that the Commissioner erred as alledged in each assignment of error set forth in paragraph 4. hereinabove.
- 2. Find that there is no deficiency in income . tax for the calendar years 1967, 1968 and 1969.
- 3. Give such other and further relief as in the premises the Court may deem fit and proper.

VICTOR CHINI Attorney-at-Law 811 State Tower Building Syracuse, New York 13202

44

Petition

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

STATE OF NEW YORK)
COUNTY OF ON ON DAGA)

GRACE A. CAPPUCCILLI, being duly sworm, says that she is one of the petitioners above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

Grace A. Cappuccilli

Subscribed and sworn to before me this 34 day of September, 1972.

Motary Public

45

Petition

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

STATE OF NEW YORK) S.S. COUNTY OF ON ON DAGA)

PETER L. CAPPUCCILLI, being duly sworn, says that he is one of the petitioners above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

Pyter L Carpuccilli

Subscribed and sworn to before me this _ day of September, 1972.

Notary Public

ICHIE FUELO
Hetery Fublic in the first of New York
Qualified in Orandean Co. Sto. 6133525
Mr. Scholar I'm Sease Electric 4th 1824

Pepartiment of the Treasury

Regional Commissioner

Internal Revenue Service

North-Atlantic Region

Date:

In reply refer to:

JUN 2 2 1972

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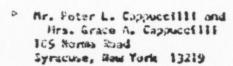


Exhibit A



Dear Mr. and Nes. Cappaceillis

Tax Year Ended December 31, 1967 December 31, 1968 December 31, 1969 Deficiency \$10,094.28 8,753.64 8.121.65 \$26,969.37

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case

may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000 for any one taxable year. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours, Johnnie M. Walters Commissioner By

Enclosures: Waiver, Form 870 Statement Envelope

(Signed) Robert J. Lyden

Robert J. Lyden
Appallate Conferes
Appallate Breach Office

FORM 4089

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

SYMBOLS

STATUTORY NOTICE STATEMENT

PIBUFI WLIMJB

Mr. Peter L. Cappuccilli and Mrs. Grace A. Cappuccilli 105 Norma Road Syracuse, New York 13219

IND OF TAX		
<u></u>	Income	
TAXABLE YEAR ENDED	DEFICIENCY	
Oncember 31, 1967 December 31, 1963 December 31, 1969	\$10,004.03 8,753.64 8,121.65	
Total	\$26,969.37	

Copy to Authorized Representative:

Victor Chini 311 State Town Puilding Syracuse, How York 13202

$\begin{array}{c} \text{Exhibit A} - \text{Notice of Deficiency, dated 6-22-72} \\ \text{attached to Petition.} \end{array}$

REV. MAR. 1970)	AL INCUME IAX		1.
AE .		TAXABLE YEARS ENDER	
ter L. and Grace A. Cappuccilli	12/31/67	12/31/69	12/31/69
ABLE INCOME BRADISTE BY WOOS AND AS			
T RETURN AS FILED			
PRELIMINARY LETTER DATED			
STATUTORY NOTICE DATED	\$22,752.93	\$13,683.37	\$14,054.04
REASES (DECREASES) IN INCOME: (See attached on atton of items)			
) Partnership income	23,142.63	22,711.64	21,356.77
) Medical expense	694.28	681.35	153.07
ABLE INCOME AS REVISED SA USTED GROSS INCOMETAS ROLASOX	46,537.99	37,073.36	35,563.83
TAX	15,355.00	10,823.01	10,156.33
TAX SURCHARGE		811.73	1,015.67
TAX PLUS SURCHARGE		11,634.74	11,172.51
TAX PLUS SURCHARGE LESS: TAX CREDITS		11,634.74	11,172.51
LESS: TAX CREDITS	15.355.00	11,634.74	
LESS: TAX CREDITS	15,355.00		
SUBTOTAL ADD: SELF-EMPLOYMENT TAX TAX FROM RECOMPUTING PRIOR YEAR .	15,355.00		
LESS: TAX CREDITS			11,172,51
SUBTOTAL ADD: SELF-EMPLOYMENT TAX TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT	15,355.00	11,634.74	11,172.51
SUBTOTAL ADD: SELF-EMPLOYMENT TAX TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT TAX LIABILITY		11,634.74	11,172,51

Exhibit A – Notice of Deficiency, dated 6-22-72

	attached	l to Petition.		
FORM 886-A	EXPL	ANATION OF ITEMS	ner indicate francis spatial file of considerable spatial spatial file.	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER				YEAR/PERIOD ENDED
Peter L. and Grace A. Cappu	uccilli			12/31/67
(a) In the calendar year	1967 the partner	rahip Cappoccilli,	Cappuceilli (Paduana had
outstanding mortgages recei	(vable from Stor	namedon davelopment	Corporation	and Sendes
Severage Corporation, and a	advances due fro	levec ephonismos me	opment Corpor	ration and
Capova Real Estate. Inc.	on which no into	prost was charged.	Under the at	itherity of
manulations 1.432-2(a) an	adjustment is ma	ide to reflect an a	rm's length	interest charge
for the use of such maley.	The principal.	amounts involved a	nd the inten	est computed
thereon at the rate of five	e percent per a	mus are as follows	1	
		Principal	Cato	Internat
Markansa-Skonshedge Develo	cont for		5,00%	\$5 . 170.57
Mortgago-Senoca Sewaraga C	OFFI -	75,7X2	5.003	1,250.00
Advances-Stoneledge Davelo	oment Coro.		2.43%	4,405,03
CELE AND DESCRIPTION OF PROPERTY OF THE PROPERTY OF	941 14 1944 F. St	165,230	1.2.6	1,993.92
		160.200	.31%	1.221.62
•••••		117,700	.50%	5 33.50
		1.673	4.70%	31.05
		0,7	4.7/5	317.05
		3,500	4.19%	152.25
			4.05%	31.00
		2,000 5,000	3.776	133.50
		11,600	3.596	504.73
		500	3.364	16.33
		2,000	2.75%	55.00
		500	2.73%	13.65
		1,000	2.045	20.40
••••••		5,000	1.97%	25.19
		5,000	1.75%	37.53
		3,309	1.675	5:.10
		2,000	1.52%	3).4)
		6,000	1.47%	151. ()
		11,500 5,000	1.17.5	31,53
		5,000	1.073	50.0
		3.000	.736	27.31
		4,000	.354	37. 27
		7,600	.73%	21. 1
		6.00)	-715	13.1.
		9,000	.325	.13 ,1
		1,000	.076	2.1)
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DEPARTMENT	OF	THE	TREASURY	- INTERNAL	REVENUE	SERVICE

FORM 886- A	EYPI AN	ATION OF ITEMS		SCHEDULE NO. OR EXHIBIT
(REV APRIL 1968)	LAI LAN	ATTOM OF THEMS		YEAR/PERIOD ENDER
ME OF TAXPAYER				12/31/67
	A. Coppuccilli			
	that the allowable deducti	***************************************		
year 1967 to \$1,0	777.83 in accordance with	the provisions of	section 213	of the Internal
Revenue Code. 11	he docrosso in the daducti	on claimed on your	return 1s	\$694.28, compute
s follows:				······
Adjusted Gr	oss Income Disclosed by Re	turn	\$32,67	3-33
	thership Income ess Income as Revised		23,14	1.76
Adjustes Gr	012 IUCOMA 12 MALISON		with the ann	
Goo-balf of	Insurance Promiums for Ho	adteal Cara	\$ 9	2.04
No Halleton an	d Jan Exponses	\$110.66	••••••	••••••
Lossa 1%	of Adjusted Gross Income Modicine and Drug Expense	25/-01		None
Madfeed and	Contal Exponent	20000011		
			e ; ;	5.79
Daductible Total	of Adjusted Gross Income Medical Expense		\$ 1,07	7.03
10000	ical Expense Deduction		_1,11	2.11
2 1-	1 deduction		\$ 63	4.28
Jecross II	1 050000101			
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SERVICION OF THE TO	REASURY - INTERNAL REVENUE SERVIC	E		FORM 886-A (REV. 4-
EPARTMENT OF THE TH	TENSOR! - IN LEMANE HETEROE SERVICE			Page

FORM 886- A (REV APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Poter L. and Grace A. Cappuccilli		12/31/63

(a) In the calendar year 1968 the partnership Cappuccilli, Cappuccilli & Paduano had outstanding martgages receivable from Stonchadge Usvalopment Corporation and Source Source, and alvances due from Stonchadge Development Corporation, on which no interest was charged. Under the authority of Magulations 1.432-2(a) an adjustment is made to reflect an arm's length interest charge for the use of such manay. The principal amounts involved and the interest computed thereon at the rate of five percent per annum are as follows:

	Principal	Rate	Interest
Mortongo-Stonehedge Development Corp.	\$1,122,850.00	5.0%	\$55,140.50
Hortgage-Seneca Sawaraga Corp.	25,000.00	5.00%	1,251.70
Advances-Stonehodge Development Corp.	221,000.00	1.34%	2,951.40
	217,500.00	2.256	4,03.79
	207,500.00	.20%	415.7
······································	199,800.00	.92%	1,/35.16
	154,493.75	.47%	120.12
Total interest			\$50.134.23

One-third of this \$68,134.93 total, or \$22,711.64, is distributable to Peter L. Cappuccilli as one of the three equal partners of that partnership.

(b) It is hold that the allowable deduction for medical and dental expenses for the year 1003 is \$437.05 in accordance with the provisions of section 213 of the Internal years Code. The decrease in the deduction claims on your return is \$601.35 computed as College:

	•••••••
Alignated gross income disclosed by return	324,0 %.22
Add: Partnership incom	
n - 1-1f of instruction prolitions for midical care	\$ 92.04
Legar 15 of adjusted gross income 457.16	
it to rests and terms and drug expenses 11 lie of and doubtle expenses \$1.736.43	tt_α×
1. 131 35 of adjusted gross theems 1501.43 1: bettliffe of the decise	, , , , , , , , , , , ,
Claimed medical expense deduction	1.16
Jacobasa in daluction	3 681.35
	L. C.

FORM 886-A (REV APRIL 1968)	EXPLANATION OF ITEMS	EXHIBIT
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Peter L. and Grace A. Cappuccilli		12/31/69

(a) In the calendar year 1969 the partnership Cappuccilli, Cappuccilli & Padumo had cotstanding mortgages receivable from Standard Development Corporation and Senses Causage Corporation, and advances due from Standards Development Corporation, on which no interest was charged. Under the authority of Regulations 1.402-2(a) an adjustment is make to reflect an arm's length interest charge for the use of such money. The principal arounts involved and the interest computed thereon at the rate of five percent per amount are as follows:

	Principal	Rate	Interest
Martgage-Stonehedge Davelopment Corp.	\$1,122,350.00	5.00%	\$56,142.50
Hartgaga-Seneca Sewerage Corp.	25,000.00	5.00%	1.251.11
Alyances-Stonehadge Development Corp.	154,473.75	1.52.6	2,3/11.31
	150,000.00	.47%	7:5.00
	125,000.00	.25%	312.50
	120,000.00	2.76%	3.312.7)
Total interest			\$64.070.31

Com-third of this \$64,070.31 total, or \$21,356.77, is distributable to Peter L. Cappuccilli as one of the three equal partners of that partnership.

(b) It is held that the allowable deduction for medical and dental expenses for the year 1969 is \$92.04 in accordance with the provisions of section 213 of the Internal Execute Code. The decrease in the deduction claimed on your return is \$153.07 computed as follows:

Mjusted gross income disclosed by rotum Adia Partnership income Adjusted gross income as revised	\$23,53%-79 21,336-77
Wijusted gross incom as revised	Ait, de:
. Constail of insurance prontons for modical care Collains and drug emplases \$ 25%.92	\$ 92.74
C. Nafre and translers \$ 25'4.92 Least 15 of a justed gross income 448.92 Million Die melicing and drug expanse	Nana
Prilical and dental expenses \$ 833.54 Leant 35 of a limited gross incom 1.346.74	
Deficition of the desponse The it Chaired medical expense deduction	3-5.7
	217411
Dagresso in deluction	3 133.17

ANSWER

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

UNITED STATES TAX COURT

PETER L. CAPPUCCILLI and GRACE A. CAPPUCCILLI,)
Petitioners,	
v.) Docket No. 7169-72
COMMISSIONER OF INTERNAL REVENUE,	
Respondent.)

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

- 1. Admits the allegations of paragraph 1. of the petition, except denies that the tax returns for the taxable years 1967, 1968 and 1969 were filed at Andover, Massachusetts.
- 2. and 3. Admits the allegations of paragraphs 2. and 3. of the petition.
- 4. (a) through (e), inclusive. Denies the allegations of error of subparagraphs (a) through (e), inclusive, of paragraph 4. of the petition.
- 5. (a). Admits the allegations of subparagraph(a) of paragraph 5. of the petition.
- 5. (b). Admits that on or about April 6, 1962, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Stonehedge Development

Answer

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

Corporation and that in connection with that sale the partnership took back a purchase money mortgage; denies the remaining allegations of subparagraph (b) of paragraph 5. of the petition.

- 5. (c). Admits that on or about April 6, 1961, the partnership, Cappuccilli, Cappuccilli and Paduano, sold certain real estate to Seneca Sewerage Corporation and took back a purchase money mortgage; denies the remaining allegations of subparagraph (c) of paragraph 5. of the petition.
- 5. (d). Admits that from time to time the partner-ship, Cappuccilli, Cappuccilli and Paduano, advanced various sums to Stonehedge Development Corporation and to Cappy's Real Estate, Inc.; denies the remaining allegations of subparagraph (d) of paragraph 5. of the petition.
- 5. (e) and (f). Denies the allegations of subparagraphs (e) and (f) of paragraph 5. of the petition.
- 6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

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Answer

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

(Sgd) Lee H. Henkel, Jr., - SMM

LEE H. HENKEL, JR. Chief Counsel Internal Revenue Service

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel
DOUGLAS K. COOK
Attorney
Internal Revenue Service
306 U. S. Courthouse
Niagara Square
Buffalo, New York 14202

JOINT MOTION TO CONSOLIDATE.

UNITED STATES TAX COURT

GERALD F. PADUANO and CAROLINE PADUANO, Petitoners,) Docket No. 7103-72 -vs-COMMISSIONER OF INTERNAL REVENUE,) Respondent.) ROCCO M. CAPPUCCILLI and DOROTHY CAPPUCCILLI, Petitioners,) -vs-Docket No. 7168-72 COMMISSIONER OF INTERNAL REVENUE,) ' Respondent.) PETER L. CAPPUCCILLI and GRACE A. CAPPUCCILLI, Petitioners,) - vs -Docket No. 7169-72 COMMISSIONER OF INTERNAL REVENUE, Respondent.)

COINT MOTION TO CONSOLIDATE

THE PARTIES JOINTLY MOVE that the Court consolidate the above-entitled cases for the purpose of the trial, briefing, and opinion.

Joint Motion to Consolidate.

IN SUPPORT THEREOF, the respondent respectfully shows unto the Court:

- 1. The above-entitled cases are scheduled for trial in Buffalo, New York during the Septmeber 17, 1973 session in that city.
- 2. The principal issues before the Court are substantially the same in each of the above-entitled cases, which will necessitate that the same evidence be introduced in each case. The petitioners are partners and the principal issues in each case pertain to the determination of the distributable income of such partnership. The interests of the petitioners are not adverse.
- 3. The time of the Court and the parties will be materially conserved by the consolidation of these cases. WHEREFORE, it is prayed that this motion be granted.

/s/ Victor Chini Counsel for Petitioners

/s/ Lawrence B. Gibbs per SMM

LAWRENCE B. GIEBS
Acting Chief Counsel
Internal Revenue Service

STIPULATION OF FACTS.

UNITED STATES TAX COURT

GERALD F. PADUANO and CAROLINE PADUANO, Petitoners, -vs-Docket No. 7103-72 COMMISSIONER OF INTERNAL REVENUE, Respondent.) ROCCO M. CAPPUCCILLI and DOROTHY CAPPUCCILLI, Petitioners,) -vs-Docket No. 7168-72 COMMISSIONER OF INTERNAL REVENUE, Respondent.) PETER L. CAPPUCCILLI and GRACE A. CAPPUCCILLI, Petitioners,) - vs -Docket No. 7169-72 COMMISSIONER OF INTERNAL REVENUE,)

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of these consolidated

Respondent.)

cases the following statements may be accepted as facts, subject to the right of either party to object to the admission in evidence of such facts on the grounds of materiality or relevancy, and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

- 1. Gerald F. and Caroline Paduano's legal residence at the time they filed the petition herein was 201 Marian Drive, Syracuse, New York 13219.
- 2. Mr. and Mrs. Paduano timely filed their joint
 Federal income tax returns for the taxable years 1967, 1968,
 and 1969 with the District Director of Internal Revenue,
 Buffalo, New York. Copies of said returns are attached hereto
 and marked Joint Exhibits 1-A through 3-C, respectively.

 A chickent Course
 Taxable Paduano is the end of Peter L. and Rocco M.
 Cappuccilli.
- 3. Rocco M. and Dorothy Cappuccilli's legal residence at the time they filed the petition herein was 109 Rockwood Road, Syracuse, New York 13215.

- 4. Mr. and Mrs. Rocco Cappuccilli timely filed their joint Federal income tax returns for the taxable years 1967, 1968, and 1969 with the District Director of Internal Revenue, Buffalo, New York. Copies of said returns are attached hereto and marked Joint Exhibits 4-D through 6-F, respectively.
- 5. Peter L. and Grace A. Cappuccilli's legal residence at the time they filed the petition herein was 105 Norma Road, Syracuse, New York 13219.
- 6. Mr. and Mrs. Peter Cappuccilli timely filed their joint Federal income tax returns for the taxable years 1967, 1968, and 1969 with the District Director of Internal Revenue, Buffalo, New York. Copies of said returns are attached hereto and marked Joint Exhibits 7-G through 9-I, respectively.

- 7. In 1954 Peter L. Cappuccilli, Rocco M. Cappuccilli and Gerald F. Paduano formed the partnership of Cappuccilli, Cappuccilli and Paduano. Each partner had a one-third interest in the parnership.
- 8. The partnership of Cappuccilli, Cappuccilli, and Paduano was principally engaged in the business of renting and selling real estate in the Syracuse, New York area.
- 9. Stonehedge Development Corporation (hereinafter referred to as "Stonehedge") was organized on April 8, 1953, and is engaged in the business of land development. The stock of Stonehedge is owned equally by Peter L. Cappuccilli, Rocco M. Cappuccilli and Gerald F. Paduano.
- 10. Sefeca Sewerage Corporation (hereinafter referred to as "Seneca") was organized on April 1, 1961 and operates a sanitary treatment plant. The stock of Seneca is owned equally by Peter L. Cappuccilli, Rocco M. Cappuccilli and Gerald F. Paduano.
- 11. Cappy's Real Estate, Inc. was organized on September 3, 1958, and is engaged in the business of operating a real estate agency. Its stock is owned equally by Peter L. Cappuccilli, Rocco M. Cappuccilli, and Gerald F. Paduano.

- 12. Attached hereto and marked Joint Exhibits 10-J through 14-N are copies of the partnership returns filed by Cappuccilli, Cappuccilli, and Paduano for the taxable years 1961, 1962, 1967, 1968, and 1969. The 1961 and 1962 returns contain the tax information relating to the sales of real estate that resulted in the mortgages involved herein. Copies of the 1961 and 1962 partnership returns filed with the State of New York are also attached hereto and marked Joint Exhibits 15-O and 16-P.
- 13. Attached hereto and marked Joint Exhibits 17-Q through 27-AA are copies of the corporate income tax returns filed by Stonehedge for the taxable years 1957 through 1963, 1965, and 1967 through 1969. Copies of the New York State Franchise Tax re urns for the years 1961 and 1962 are attached hereto as Joint Exhibits 28-AB and 29-AC.
- 14. Attached hereto and marked Joint Exhibits 30-AD and 31-AE are copies of the corporate income tax returns filed by Seneca for the taxable years ended June 30, 1968 and June 30, 1969.

- 15. Attached hereto and marked Joint Exhibit 32-AF is a copy of the corporate income tax return filed by Cappy's Real Estate, Inc. for the taxable year 1967.
- 16. During the taxable years in question the partnership of Cappuccilli, Cappuccilli and Paduano carried two mortgage receivables on its books and records due from Stonehedge with balances due of \$70,000.00 and \$1,052,850.00, respectively. These mortgages resulted from the sale of realty on February 2, 1961 and January 10, 1962, respectively. Attached hereto and marked Joint Exhibits 33-AG through 38-AL, respectively, are copies of the closing statement, mortgage note, and mortgage for each transaction. A schedule showing the purchase and sale of these properties by the partnership is attached hereto and marked Joint Exhibit 39-AM.
- 17. The outstanding mortgage balances on these two transactions during the years 1967, 1968 and 1969 according to partnership books and records is as follows:

Henderson Farm \$ 70,000.00 Seneca Knoll Property 1,052,850.00

- 18. During the taxable years involved herein the partnership of Cappuccilli, Cappuccilli, and Paduano carried a mortgage receivable on its books and records due from Seneca in the amount of \$25,000.00. This mortgage resulted from the sale of half of the Preston farm (20 acres) by the partnership to Seneca on April 16, 1961. Attached hereto and marked Joint Exhibits 40-AN through 42-AP respectively are copies of the closing statement, mortgage note, and mortgage. The Preston farm was purchased by the partnership on April 15, 1961, from Stonehedge. A copy of the closing statement is attached hereto as Joint Exhibit 43-AQ.
- 19. Neither Stonehedge nor Seneca paid the partnership of Cappuccilli, Cappuccilli, and Paduano any interest on their respective mortgages during the taxable years 1967, 1968, and 1969.
- 20. During the taxable years 1967, 1968, and 1969, the partnership of Cappuccilli, Cappuccilli, and Paduano had loans due from Stonehedge and Cappy's Real Estate, Inc. (other than the mortgage loans referred to above) on which no interest was charged or paid in the amounts set forth below.

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Date	STONEHEDGE Loan (Payment)	Year End Balance
12/31/66		180,850.00
1/9/67	1,800.00	
1/26/67	6,000.00	
1/26/67	500.00	
2/14/67	3,000.00	
2/14/67	500.00	
3/1/67	2,000.00	

Date	STONEHEDGE Loan (Payment)	Year End Balance
3/10/67	2,000.00	
3/30/67	5,000.00	
4/13/67	11,000.00	
5/1/67	500.00	
6/13/67	2,000.00	
6/15/67	500.00	
6/30/67	(15,650.00)	
8/4/67	1,000.00	
8/14/67	5,000.00	
8/25/67	5,000.00	
8/31/67	3,000.00	
9/11/67	2,000.00	
9/15/67	6,000.00	
9/26/67	7,500.00	
9/26/67	4,000.00	
9/26/67	(5,000.00)	
10/6/67	5,000.00	
10/13/67	4,000.00	
10/23/67	3,000.00	
10/30/67	4,000.00	
11/8/67	3,000.00	

Date	STONEHEDGE Loan (Payment)	Year End Balance
11/10/67	6,000.00	
11/24/67	(43,500.00)	
12/8/67	8.000.00	
12/26/67	3,000.00	
Year End Balance		\$221,000.00
4/8/68	(3,500.00)	
9/19/68	(10,000.00)	
9/30/68	(17,700.00)	
12/6/68	(35,306.25)	
Year End Balance		154,493.75
4/21/69	(4,493.75)	
5/26/69	(25,000.00)	
6/13/69	(5,000.00)	
Year End Balance		120,000.00
	CAPPY'S REAL ESTATE, INC.	
Date	Loan (Payment)	Year End Balance
12/31/66		32,400.00
1/17/67	1,000.00	
1/26/67	3,000.00	

Date	Loan (Payment)	Year End Balance
2/14/67	1,000.00	
6/30/67	(5,000.00)	
8/4/67	(12,400.00)	
11/2/67	(6,000.00)	
11/27/67	(14,000.00)	
Year End Balance		-0-

21. Petitioners' concede that if interest can be allocated under the facts in this case that the rate used by the Internal Revenue Service in its notice of deficiency is not being contested.

22. The respondent has allowed Stonehedge, Seneca, and Cappy's Real Estate, Inc. additional interest deductions for the years in question in an amount equal to the interest income it has allocated to the partnership of Cappuccilli, Cappuccilli, and Paduano and through it to petitioners involved herein.

/s/ Victor Chini

Counsel for Petitioners

/s/ Lawrence B. Gibbs per SMM

LAWRENCE B. GIBBS
Acting Chief Counsel
Internal Revenue Service

MOTION TO CORRECT TRANSCRIPT (Gerald F. Paduano v. Com'r Internal Revenue).

UNITED STATES THE COURT

	:		
GERALD F. PADUANO,	:		
	:		
Petitioner	:		
	•	Docket No.	71.03-72
V8.	:		7168-72
	:		7169-72
	:		
	:		
COMMISSIONER OF IMPERMAL REVENUE,	:		
	:		
Respondent	:		
	:		

MOTION TO CORRECT TRANSCRIPT

move that the changes in the wording listed below, be made in the transcript of testimony in the above-entitled case, in order to correct inaccuracies due to stenographic errors.

Page	Line	
3	21	1964 should read 1954
4	5	larges should read largest
4	11	1.42-2(a) should read 1.482-2(a)
21	8	phobitable should read prohibitive
24	19	mortgager should read mortgagor
31	13	the words "it as" should be deleted
50	22	Komain should read Comment GRANTED
55	16	delete "a" and add after recognized the words "in the" (Signed) HOWARD A. DAWSON, IR,

Motion to Correct Transcript (Gerald F. Paduano v. Com'r Internal Revenue).

WHEREFORE, it is prayed that this Motion is granted.

Victor Chini Counsel for Petitioner 811 State Tower Building Syracuse, New York 13202

NO OBJECTION:

/s/ Meade Whitaker

MEADE WHITAKER
Chief Counsel
Internal Revenue Service
Counsel for Respondent

DECISION

(Peter L. and Grace A. Cappuccilli v. Com'r Internal Revenue).

UNITED STATES TAX COURT WASHINGTON, D.C. 20217

PETER L. CAPPUCCILLI AND
GRACE A. CAPPUCCILLIPETITIONER, S

v.

Docket No.

7169-72

COMMISSIONER OF INTERNAL REVENUE, Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed March 20, 1975, it is

ORDERED AND DECIDED: That there are deficiencies in petitioners' income tax for the taxable years 1967, 1968 and 1969 in the amounts of \$10,094.08, \$8,753.64 and \$8,121.65, respectively.

/s/ William M. Fay Judge

Entered: APR 1 1975

Form 50 Rov. Apr. 1970

DECISION

(Rocco M. and Dorothy Cappuccilli v. Com'r Internal Revenue).

UNITED STATES TAX COURT WASHINGTON, D.C. 20217

ROCCO M. CAPPUCCILLI AND DOROTHY CAPPUCCILLI Petitioner, E

Docket No.

7168-72

COMMISSIONER OF INTERNAL REVENUE. Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed March 20, 1975, it is

ORDERED AND DECIDED: That there are deficiencies in petitioners' income tax for the taxable years 1967, 1968 and 1969 in the amounts of \$10,553.54, \$9,217.04 and \$7,921.75, respectively.

> /s/ William M. Fay Judge

Entered: APR 1 1975

DECISION

(Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

UNITED STATES TAX COURT WASHINGTON, D.C. 20217

GERALD F. PADUANO AND CAROLINE PADUANO,

Petitioner,

Docket No.

7103-72

COMMISSIONER OF INTERNAL REVENUE, Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed March 20, 1975, it is

ORDERED AND DECIDED: That there are deficiencies in petitioners' income tax for the taxable years 1967, 1968 and 1969 in the amounts of \$11,061.91, \$8,881.62 and \$8,824.21, respectively.

/s/ William M. Fay Judge

Entered: APR 1 1975

MEMORANDUM FINDINGS OF FACT AND OPINION (Gerald F. and Caroline Paduano v. Com'r Internal Revenue).

T. C. Memo. 1975-69

UNITED STATES TAX COURT

GERALD F. PADUANO AND CAROLINE PADUANO, ET Al., Petitioners
v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 7103-72, 7168-72, Filed March 20, 1975. 7169-72.

<u>Victor Chini</u>, for the petitioners.

John D. Steele, Jr., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

FAY, Judge: Respondent has determined the following deficiencies in the Federal income tax of the petitioners:

Cases of the following petitioners are consolidated herewith: Rocco M. Cappuccilli and Dorothy Cappuccilli, Docket No. 7168-72; and Peter L. Cappuccilli and Grace A. Cappuccilli, Docket No. 7169-72.

Petitioners	Year	Deficiency
Gerald F. and Caroline Paduano	1967 1968 1969	\$11,061.91 8,881.62 8,824.21
Rocco M. and Dorothy Cappuccilli	1967 1968 1969	\$10,553.54 9,217.04 7,921.75
Peter L. and Grace A. Cappuccilli	1967 1968 1969	\$10,094.08 8,753.64 8,121.65

We are to decide if respondent properly imputed interest income to petitioners pursuant to section 482, Internal Revenue Code of 1954, as amended.

FINDINGS OF FACT

Gerald F. and Caroline Paduano, Rocco M. and Dorothy Cappuccilli, and Peter L. and Grace A. Cappuccilli, husbands and wives, filed joint Federal income tax returns for the years in issue with the district director of internal revenue, Buffalo, New York, and were residents of Syracuse, New York, when the petitions herein were filed.

In 1954 petitioners formed a partnership styled "Cappuccilli, Cappuccilli and Paduano" (CCP), in which each

All section references are to the Internal Revenue Code of 1954, as amended.

Hereinafter "petitioners" shall refer to Gerald Paduano, Rocco Cappuccilli and Peter Cappuccilli, collectively.

had a one-third interest and which engaged principally in the business of renting and Selling realty. Each of petitioners also held a one-third stock interest in: Stonehedge Development Corporation (Stonehedge), organized on April 8, 1953; Seneca Sewerage Corporation (Seneca), organized on April 1, 1961; and Cappy's Real Estate, Inc. (Cappy), organized on September 3, 1958.

In the period February 22, 1961 - January 3, 1962, CCP acquired five contiguous farms, known collectively as Seneca Knolls, at a total cost of \$320,083. On January 10, 1962, CCP conveyed Seneca Knolls to Stonehedge in consideration of: a cash payment in the amount of \$3,430; the assumption of mortgage obligations totalling \$275,170; and a note in the amount of \$1,075,000, bearing no interest, secured by a purchase money mortgage, and providing for the payment of \$75,000 on January 10, 1964, and of \$100,000 on January 10 of each of the ten succeeding years.

4	Farm.	Date of Purchase	Purchase Price
	Walter	2/22/61	\$ 64,065
	Commane	10/20/61	71,830
	Green	10/26/61	34,788
	Patterson	11/24/61	22,400
	Higgins	1/ 3/62	127,000

Henderson Farm, lying adjacent to Seneca Knolls, was purchased by CCP on March 8, 1960, for \$125,460. The farm was sold to Stonehedge on February 20, 1961, in consideration of: a cash payment of \$27,894.86; the assumption of mortgage obligations totalling \$107,605.14; and a note in the amount of \$81,000, bearing interest at an annual rate of six percent, secured by a purchase money mortgage, and providing for payment to be made in equal installments on the first and second anniversaries of the sale.

CCP purchased Preston Farm from Stonehedge on April 15, 1961, for \$22,500. Petitioners intended that a sewerage treatment plant be built at Preston Farm to service Seneca Knolls and Henderson Farm. Pursuant to that design they caused CCP to sell one-half of the Preston Farm to Seneca on April 16, 1961, in consideration of: a cash payment of \$5,000; the assumption of mortgage obligations of \$10,000; and a note in the amount of \$25,000, bearing interest at the rate of six percent per annum, secured by a purchase money mortgage, and providing for payment in full on April 15, 1966.

Petitioners anticipated that Seneca Knolls and Henderson Farm would be subdivided into lots, the sales

The note afforded Seneca a limited right of prepayment but provided for no abatement in purchase price in the event that right were exercised.

of which would provide Stonehedge with sufficient funds to discharge the obligations which it incurred in acquiring the realty; but owing to circumstances which need not be recounted here, the development of those properties could not proceed as planned. Consequently, Stonehedge was unable to reduce the principal amount of its indebtedness to CCP in compliance with the terms of its several obligations.

These obligations were not wholly satisfied until March 14, 1972, pursuant to an action in foreclosure initiated by CCP.

Seneca did not discharge the obligation which it incurred in purchasing one-half of Preston Farm until 1973.

CCP waived compliance with the interest obligations incurred by Stonehedge and Seneca in purchasing Henderson Farm and one-half of Preston Farm, although both of these corporations paid interest to others of their creditors while the mortgage obligations to CCP remained outstanding.

Aside from the mortgage loans, CCP made advances to Stonehedge and Cappy to enable them to defray expenses necessary to their continuing in operation. Certain of these loans, in respect of which interest was neither charged nor paid, were outstanding during the years in issue.

Prior to January 1, 1967, Stonehedge reduced the principal amount of its mortgage obligations to CCP by \$33,150. It made no further payments of principal prior to the foreclosure.

OPINION

where one member of a group of commonly controlled entities becomes indebted to another but is charged no interest, respondent may allocate interest to the creditor under section 482, would interest have been charged under

SEC. 482. ALLOCATION OF INCOME AND DEDUCTIONS AMONG TAXPAYERS.

In any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary or his delegate may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades, or businesses.

Income Tax Regs. adopted pursuant to sec. 482 provide in pertinent part:

Sec. 1.482-1(b) Scope and purpose. (1) The purpose of section 482 is to place a controlled tax-payer on a tax parity with an uncontrolled taxpayer, by determining, according to the standard of an uncontrolled taxpayer, the true taxable income from the property and business of a controlled taxpayer. ***

Sec. 1.482-1(a)(c) The term "true taxable income" means, in the case of a controlled taxpayer, the taxable income *** which would have resulted to the controlled taxpayer, had it in the conduct of its affairs *** dealt with the other member or members of the group at arm's length. ***

continued

like circumstances in an arm's length transaction.

B. Forman Company v. Commissioner, 453 F.2d 1144 (C.A. 2, 1972), affirming in part and reversing in part 54 T.C. 913 (1970), certiorari denied 407 U.S. 934 (1972). Pursuant to his authority under section 482, respondent has imputed interest income to CCP at the rate of five percent per annum on the loans to Stonehedge, Seneca and Cappy outstanding during the years in issue.

Footnote 7 -- continued.

Sec. 1.482-2(a) Loans or advances--(1) In general. Where one member of a group of controlled entitles makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group, and charges no interest, or charges interest at a rate which is not equal to an arm's length rate as defined in subparagraph (2) of this paragraph, the district director may make appropriate allocations to reflect an arm's length interest rate for the use of such loan or advance.

- This Court does not espouse the interpretation of sec. 482 set forth in B. Forman Company v. Commissioner, 453 F.2d 1144 (C.A. 2, 1972), affirming in part and reversing in part 54 T.C. 913 (1970), certiorari denied 407 U.S. 934 (1972). See Kerry Investment Co., 58 T.C. 479 (1972), affirmed in part and reversed in part 500 F.2d 108 (C.A. 9, 1974); Kahler Corp. 58 T.C. 496 (1972), reversed 486 F.2d 1 (C.A. 8, 1973); Fitzgerald Motor Co., 60 T.C. 957 (1973), affd. F.2d (C.A. 5, 1975). We shall, however, apply It in this instance. See Jack E. Golsen, 54 T.C. 742 (1970), affd. 445 F.2d 985 (C.A. 10, 1971), certiorari denied 404 U.S. 940 (1971).
- Petitioners concede that if interest is properly imputable to CCP under the circumstances obtaining herein, the rate utilized by respondent is appropriate.

Respondent has allowed Stonehedge, Seneca and Cappy additional interest deductions for the years in issue in amounts equal to the interest income which he has allocated to CCP under sec. 482.

Petitioners have acknowledged that no interest was charged on the nonmortgage loans but have failed to demonstrate that a party dealing with Stonehedge and Cappy at arm's length would have done the same. Accordingly, we hold that respondent properly imputed interest income to CCP in respect of the nonmortgage loans.

Petitioners have also failed to demonstrate that a party dealing with Stonehedge at arm's length would not have charged interest on the obligation of \$1,075,000 incurred by Stonehedge in purchasing Seneca Knolls. And had CCP been dealing with Stonehedge and Seneca at arm's length, it would likely have insisted that they honor their commitments to pay interest annually on the obligations which they incurred in purchasing Henderson Farm and one-half of Preston Farm, respectively; for both corporations were paying interest to others of their creditors while the aforesaid two obligations were outstanding. CCP, however, failed to enforce these commitments, apparently for no other reason than that it was commonly controlled with Stonehedge and Seneca.

Petitioners maintain that while ostensibly no interest was paid on the mortgage loans, the price for which the realty was sold included an element of interest. This contention is properly to be sustained only upon a demonstration

that in each instance the realty was intentionally sold at a price exceeding its fair market value by the amount of interest that would have account at a definite rate over the term of the contract of sale. Elliott Paint & Varnish Co., 44 B.T.A. 241 (1941); Kingsford Co., 41 T.C. 646 (1964).

Petitioners have purported to show that Seneca Knolls. Henderson Farm and one-half of Preston Farm were each sold for an amount sufficiently in excess of fair market value to include interest accruable over a 12-year period at 8.5 percent, 7.5 percent and 12 percent, respectively. In our judgment, this evidence does not substantiate petitioners' contention. Or the three contracts of sale, only one provided for payment over a 12-year period, the other two providing for payment over periods of two and five years. Seneca was authorized to prepay its obligation to CCP; had it availed itself of that privilege, however, there would have been no abatement of the purchase price under the terms of the contract of sale. Petitioners, furthermore, have not undertaken to explain in terms of their contention why CCP might have charged differing rates of interest with respect to each of the mortgage obligations; or why two of the contracts of sale were made expressly to provide for the payment of interest over and above the sale price

Clearly it as irrelevant to the matter in issue that neither of the inter two obligations was in fact timely paid.

at the annual rate of six percent. We are therefore convinced that in setting the price at which each piece of mortgaged realty was sold by CCP, petitioners did not intend that the price include unstated interest. Accordingly,

Decision will be entered for the respondent.

See by way of contrast Estate of Betty Berry, 43 T.C. 723 (1965), affd. per curiam 372 F.2d 476 (C.A. 6, 1967), certiorari denied 389 U.S. 834 (1967).

MINUTES OF HEARING, dated Oct. 1, 1973.

UNITED STATES TAX COURT

GERALD F. PADUANO, ET AL

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 7103-72

7168-72

7169-72

LOCATION OF HEARING: UNITED STATES TAX COURT

NEW YORK CITY, NEW YORK

October 1, 1973 DATE:

BEFORE: THE HONORABLE WILLIAM M. FAY

JOHN D. STEELE, JR. APPEARANCES:

for the Respondent

VICTOR CHINI

for the Petitioner

Minutes of Hearing, dated Oct. 1, 1973. Stipulation and Motion.

PROCEEDINGS

THE CLERK: All persons having business before the United States Tax Court will give their attention, the Court is now in session, Judge William M. Fay presiding.

THE COURT: Good afternoon, gentlemen.

MR. CHINI: Victor Chini for the Petitioners.

THE COURT: Mr. Chini.

MR. STEELE: John D. Steele, Jr. for the Respondent, Your Honor.

THE CLERK: Docket number 7103-72 and two related docket numbers, Gerald F. Paduano and related petitioners.

THE COURT: Mr. Chini, would you like to make your opening statement?

MR. CHINI: Thank you, I will. Do you want to submit the Exhibits --

MR. STEELE: Yes, Your Honor, do you want us to submit the stipulation of facts --

THE COURT: If you would like, yes.

MR. STEELE: At this time we have a stipulation of facts, which contains joint Exhibits 1-A through 43 -- it contains joint Exhibits 1-A through 43 AQ, and also we would like to submit a joint motion to consolidate these cases for the purpose of trial briefing.

Minutes of Hearing, dated Oct. 1, 1973. Opening Statement of Mr. Chini.

THE COURT: Yes, the motion is granted, and the stipulated facts and the Exhibits attached are received in evidence.

MR. STEELE: Thank you, Your Honor.

THE COURT: All right, Mr. Chini, you may proceed, now.

MR. CHINI: Your Honor, the issue in this case is in regard to the allocation --

THE COURT: Just one second -- yes, proceed, Mr. Chini.

MR. CHINI: Your Honor, the issue involved in this case is in regard to the allocation of interest income to the Petitioners. The calendar years 1967, 1968 and 1969 are involved, and the proposed deficiencies in income tax are as follows. For Gerald Paduano and wife a total of \$28,767.74. For Rocco Cappuccilli and wife, a total of \$27,692.33. And, for Peter L. Cappuccilli and wife, a total of \$27,692.37 for the three years. All those said deficiencies are in dispute.

Gerald Paduano, Rocco Cappuccilli, and Peter
Cappuccilli formed a partnership in 1964 for purposes of
investing in real estate. They also formed the Stonehedge
Development Corporation, Seneca Sewerage Corporation,
and Cappy's Real Estate, Inc. The three members of the
partnership were also equal members in the corporation.

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Minutes of Hearing, dated Oct. 1, 1973. Opening Statement of Mr. Chini.

During 1961 and 1962, the partnership sold certain real estate to Stonehedge Development Corporation and Seneca Sewerage Company. They took back mortgages on the sale.

Due to certain difficulties, the mortgage payments were not timely made. The larges mortgage amounted to \$1,075,000,00, the terms ran from 1962 to 1974, and was non-interest bearing.

The Commissioner of Internal Revenue for the years 1967, 1968 and 1969 has allocated interest income to the partnership on these mortgages under regulations 1.42-2 (a).

Also during the tax years involved, the partnership made advances to the three corporations mentioned, without interest.

The Commissioner has allocated interest income of these advances also.

It is our contention that although the Foreman case might apply to the advances --

THE COURT: Which one?

MR. CHINI: The Foreman case, Your Honor, decided in the 2nd Circuit --

THE COURT: Right.

MR. CHINI: Although it might apply to the advances, we do not feel that it should apply to the land sales because there was a built in interest factor of at least 5 percent

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Minutes of Hearing, dated Oct. 1, 1970. Opening Statement of Mr. Steele.

in the selling price from the partnership to the corporation.

THE COURT: Yes, you may proceed, Mr. Steele.

MR. STEELE: Thank you, Your Honor.

Your Monor, as Mr. Chini has told you, the only issue in these cases involves the question of whether or not the Commissioner properly allocated interest income to the partnership of Cappuccilli, Cappuccilli and Paduano from their controlled corporations, Stonehedge Development Corporation, Seneca Sewerage Corporation and Cappy's Real Estate, Inc.

There are basically two different types of transactions involved in this case, Your Monor. First, the situation where the partnership sold land to its controlled corporations and received back as part of the consideration a mortgage which either was without interest or if the mortgage recited interest, no interest was paid thereon.

The second type of transaction involved herein relates to interest free advances to the controlled corporations by the partnership.

It is the Respondent's position that interest can be allocated to the partnership from the controlled corporations under Treasury Regulation 1.482-2. The -- This regulation has been upheld by the 2nd Circuit in the

Minutes of Hearing, dated Oct. 1, 1973. Opening Statement of Mr. Steele.

Foreman case, which Mr. Chini pointed out.

Now, if interest income is allocated to the partnership, each of the partners is taxable on his distributed share.

The Respondent believes that the facts in this case will support his determination to allocate interest income to the partnership, and through it to the partners.

Now, obviously to the extent that interest income is allocated to the partnership, the three corporations involved are entitled to a corresponding increase in their interest deductions for the respective years.

These increases have already been proposed by the Respondent, in the corporate cases, and the Respondent as he must concedes that they are entitled to these additional interest deductions, which will either reduce taxable income, and in some cases increase their net operating loss carry overs.

Now, Your Honor, there is one slight thing that I would like to point out. There are three mortgages involved. In two of the mortgages, the mortgages themselves recite interest at the rate of 6 percent per year. And, the Respondent has only allocated a 5 percent interest rate on each of these mortgages, and the Respondent is not at this time going to ask for an increased deficiency on this amount. We are just pointing this out because we feel that

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the mortgage recites an interest rate is a little different situation then where no interest rate is recited.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Steele. Mr. Chini, would you like to call your first witness?

MR. CHINI: Yes, sir. A Mr. Peter Cappuccilli, will you take the stand?

THE CLERK: You do solemnly swear that the testimony you are about to give to the Court in these cases, will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: State your name and address for the record.

THE WITNESS: Peter Cappuccilli, --

THE CLERK: Would you spell your last name,

please?

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THE WITNESS: C-a-p-p-u-c-c-i-1-1-i, 105

Norma Road, N-o-r-m-a, Syracuse, New York, 13219.

THE CLERK: Thank you, please take the stand.

PETER CAPPUCCILLI, called as a witness on

behalf of the Petitioners, having been duly sworn, took the

stand and testified as follows:

24 DIRECT EXAMINATION BY

25 MR. CHINI:

		reter cuppateur, a retitioner, Direct.
- 1	Q	Mr. Cappuccilli, are you one of the Petitioners
2	in this ac	tion?
3	٨	Yes.
4	Q	What is your business, please?
.î	Α	I'm a builder, a land developer.
6	Q	In other words, what organization are you connected
7	with?	
8	Α	Community Technology, Incorporated.
9	Q	And, they are successor to whom?
10	Λ	Cappy's of Syracuse, Inc.
11	Q	Would you explain please the function of
12	Cappy's of	Syracuse, Inc. and CTI?
1:3	Λ	We are house builders, and land developers. We
1.1	build tract	ts of houses, and develop land.
15	Q	How long have you been in the building develop-
16	ment busine	ess?
17	Λ	Twenty-seven years.
18	Q	Are you one of the partners in the partnership
19	of Cappuce:	illi, Cappuccilli and Paduano?
20	Λ	Yes.
21	Q -	Are you a stockholder in Stonehedge Development
55	Corporation	1?
23	Λ	Yes.
21	Q	And, Seneca Sewerage Corporation?
25	/ 1	Yes.
STORY OF THE STREET		

- O And, Cappy's Real Estate, Inc?
- A Yes.
- Q Please state the nature of your duties with respect to the partnership and the corporations just mentioned? What affiliation do you have:
- A As President and Treasurer of the corporations,

 I function the normal duties of a President, which would
 be the heading of the corporation, and handling the financial
 end of it, and the administrative end of the business.
- Q Do you have a brokers license for New York State?
 - A Yes.
 - Q Would you explain the purpose of the license?
- A I have been a broker in the State of New York for many years, and the purpose is to be able to buy and sell real estate, and to operate a brokerage real estate firm, with salesmen selling under my brokerage license.
 - Q Are you qualified to appraise real estate?
 - A Yes.
- Q Have you appraised real estate in County Onondaga, in the State of New York?
 - A Yes.
- Q Are you familiar with the land values in Onon-daga County?
 - A Yes.

1	Q How long have you been buying and selling land
2	in Onondaga County?
:3	A Twenty-five years.
4	Q Did you ever purchase real estate on a time
5	basis without paying interest?
6	Λ Yes.
7	Q Can you name a transaction involving such a
8	A Yes. One particular transaction is the
9	Patterson farm, which we have purchased without interest.
10	Q What was the amount, do you recall?
11	A Approximately can I refer to my notes?
12	Q Um-huh.
1:3	A \$22,400.00.
1.4	Q And, that was on a time basis without interest?
15	A Yes.
16	Q Would you have paid the same cash price for the
17	Patterson farm?
18	A No.
19	Q Why not?
20	Λ Because the price of the farm without interest
21	was less than \$22,400.00.
22	O There was an interest factor built in?
23	A Yes.
24	Q Was it a common practice, as far as you know
25	in the real estate profession to make sales on a time basis,

without charging interest?

A Yes.

Q Would you explain -- please explain why this was done?

A In many occasions, the attorneys and the accountants for the respective sellers would advise their clients to always negotiate with us, who were purchasing, or if we represented purchasers in the case of real estate brokering, that if we would cooperate and add the interest to the selling price, and then -- then divide it into the term years and pay it accordingly. It was -- all it depended on was the seller's situation taxwise I believe, or to their advantage, and we obliged the attorneys and the accountants when this particular case came up.

Q In the late 1950's and early 1960's, say before July of 1963, do you recall '-- or do you know of your own knowledge what the difference would be taxwise, if somebody included interest in the total price, or charged interest separately?

A Well, I was aware of the fact that because of many discussions with attorneys and accountants in selling and buying real estate, that there is a definite difference between paying income tax on interest, as an ordinary income, or with capital gains if it was on the long term.

Q In connection with your business with these

corporations that you just mentioned, and with the partnership, did you negotiate loans from banks?

- A Yes.
- Q About how often does this occur during the year?
- A Fifteen to twenty times a year.
- Q Is it part of your business to be familiar with interest rates?
 - A Yes.
- Q Were you familiar with the interest rates in Onondaga County in 1961 and 1962?
 - A Yes.
 - Q Could you tell us what they were approximately?
- A On corporate mortgages, it ranged between 5 and 7 percent.
- Q Are you familiar with the current interest rates charged on corporate mortgages?
 - A Yes, very much so.
 - Q What are they?
 - A Today it is between 8 and 12 percent.
- Q Did the partnership ever acquire property known as the Ser ca Knolls Tract, consisting of five farms?
 - A Yes.

MR. CHINI: Your Honor, to save time, we do have an Exhibit that enumerates the different farms purchased by the partnership and later sold—to the corporation, to

is

avoid going through each transaction, if you would prefer, I could just refer to the Exhibit. 2 THE COURT: You have no objection, I assume? MR. STEELE: None, Your Honor. 4 THE COURT: Is it -- has it been received in evidence? ti MR. STEELE: Yes, sir. MR. CHINI: Yes, sir. 9 THE COURT: Oh, all right, fine. MR. STEELE: Joint Exhibit 39-AM. 10 THE COURT: Oh, all right, yes. Right. 11 MR. CHINI: Your Honor, just to familiarize 12 Your Monor, at different times the partnership took options 1:3 on property, on certain farm land, after a period of time 14 the partnership bought these farms, and at a later date 15 16 they sold the farms to Stonehedge Development Corporation or Seneca Sewerage. 17 BY MR. CHINI: (Resuming) 19 With respect to the five farm group, which we 20 generally refer to as the Seneca Knolls tract, did the 21 partnership ever dispose of it? A Yes. 23 When was that? A It was in January 10th, of 1962. 25 To whom was it sold?

1	A The Stonehedge Development Corporation.
2	Q Do you recall the details of the selling price
3	and the terms?
4	A Yes. The selling price was \$1,353,600.00. And,
5	the assumed mortgages I believe of \$320,000.00, and a
6	downpayment of \$3,000.00, and took back a purchase money
7	mortgage of \$1,075,000.00 a second mortgage of \$1,075,000.00.
8	Q Was interest included on top of the mortgage,
9	was it recited in the mortgage?
10	A The instrument cited without interest.
11	Q On an average how long did the partnership own
12	the Seneca Knolls property just referred to?
1.3	A Between two and three years.
14	Q Including the option period?
15	A Yes.
16	Q As a person who has extensive
17	MR. STEELE: I just I object to the word
18	owned, Your Honor, if you take a look at the Exhibit
19	THE COURT: We'll assume for the purpose of the
20)	record that that is a means of identifying it rather than
21	a conclusion.
2-2	MR. STEELE: I would like the record to note,
23	that the Government surely isn't going to concede that the
24	date of an option to the date of sale means is the length
05	of time that the property has been held that to just not so.

MR. CHINI: Well, the option date is important

Your Honor, only for the purpose -- the fact that the price
has been fixed earlier than the date that you purchased it,
so there is a time interval in between, and land appreciates
as a result of time, we want to bring that fact out.

MR. STEELE: All right, as long as it is understood that -- that the -- that as far as the Government is concerned ownership begins when the taxpayer gets the deed --

THE COURT: Well, that is the Government's position, all right.

MR. STEELE: Right.

THE COURT: All right.

BY MR. CHINI: (Resuming)

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Q As a person who has extensive real estate background on the Onondaga County area, do you have an opinion as to the fair market value of these five farms which comprised the Seneca Knolls tract, as of January 10th, 1962?

A Yes.

Q And, in your opinion what was their value?

Λ \$720,000.00.

Q How did you arrive at their fair market value?

A The value was appreciation for part, and part
was for the fact that we assembled five farms, they are
contiguous, and the value of the five farms as a contiguous

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1	piece of land for the purpose of developing a large tract
2	of land, has an appreciated value based on those facts.
3	Q I see.
4	A And, its location geographical location.
5	MR. CHINI: I would like to have you mark this
6	as the Petitioner's Exhibit for identification I don't
7	know what number we are on.
8	THE CLERK: Petitioner's Exhibit 44 marked for
9	identification.
10	BY MR. CHINI: (Resuming)
11	Q Mr. Cappuccilli, I show you Petitioner's Exhibit
12	number 44 for identification, would you kindly identify
13	it, please?
14	A This map shows the an area of approximately
15	three miles between the throughway exit 39 and the village
16	of Baldwinsville, and displayed in dark blue are the farms
17	that make up the tract of land that we have purchased over
18	a period of years, going back to 1955 through to 1961.
19	MR. CHINI: I would like to offer it as a
20	Petitioner's Exhibit.
21	THE COURT: Any objections?
22	MR. STEELE: No objection, Your Honor.
23	THE COURT: It will be received in evidence,

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BY MR. CHINI: (Resuming)

Exhibit 44.

1	Q If on January 10th, 1972, if you sold a property
2	for cash
3	A What date, sir?
4	Q January 10th, 1972
5	A 1972?
6	Q 1962, I'm sorry 1962, on the date you sold it
7	to Stonehedge Development, what would you have taken as a
8	cash price the partnership?
9	MR. STEELE: Objection, it is totally irrelevant,
0	and just calls for a you know, it is a self-serving
1	statement, and everything else.
2	THE COURT: Well, he's one of the members of
3	the organization, and he should have an opinion as to what
4	he would take in cash opposed to a mortgage, I'll let him
5	answer.
16	THE WITNESS: \$720,000.00.
17	BY MR. CHINI: (Resuming)
18	Q Realizing that figure, and the fact that mort-
19	gages were on the property in the amount of about \$320,000.00
20	what would you consider your equity in that property at
21	that time?
22	A \$400,000.00.
23	Q If the fair market value on January 10th, 1962
24	was \$720,000.00 on these five farms, the Seneca Knolls
25	Tract, how did you justify the selling price to Stonehedge

1	Development of \$1,353,600.00?
2	A By interest.
3	Q And, about what interest factor did you consider
4	in 1962 when you sold this property?
5	A Well, the interest factor in that time was
6	approximately 7 to 8 percent on this type of a mortgage.
7	Q And, on what figure did you compute your interest
8	A The interest was computed on the fair market
Э	value, less the mortgages, and the down payment.
0	Q The equity?
1	A The equity, certainly.
2	Q \$400,000.00?
3	A \$400,000.00 equity that we had in the property.
4	Q In the sale to Stonehedge of the Seneca Knolls
5	property, how did the partnership expect to be paid on the
6	\$1,075,000.00 mortgage, how were payments supposed to be
7	forthcoming to the partnership?
8	A Just a continuation of what we were doing for
9	years before. We were developing approximately
2()	Q Excuse me we refers to who?
21	A The Croporations, Stonehedge Development Corpo-
1-)	ration was developing the land, and by putting in the
23	utilities necessary necessary utilities, developing
24	approximately 100 lots a year, and the acreage that we

had, multiplied by approximately 2.3 or 2.2 lots per acre,

come into approximately 1,000 -- 1,100 lots repending on the exact sizes, which would give us approximately 100 lots per year. And, doing this over a period of ten or twelve years, it would be using up this land.

Q In other words, the land was sold by Stonehedge Development Company?

A Right, development corporation, selling the lots off to builders or to ourselves to build on, whatever the case may be, we would use up this, and by selling the lots, we would receive the income, and pay off the mortgages.

The corporation would pay off the mortgages --

Q To the partnership?

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A Both the first mortgage and the partnerships, right.

Q Were any problems anticipated in the development by Stonehedge?

A Well, the normal problems that are anticipated in this business are very evident as everybody knows, in the land development business you have the problem of working with municipalities, zoning problem, is always a factor. The land is always bought as agricultural zoning, and we have to have it rezoned to be able to sub-divide it into lots. This is a problem that if you don't do -- if you don't meet with the zoning requirements at the time, or you can't get it zoned the way that you want it, you are going

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Minutes of Hearing, dated Oct. 1, 1973. Peter Cappuccilli, a Petitioner, Direct.

have problems.

Also the fact that marketing condition. There is always a question of whether or not you are going to be able to market 100 a year, and if you don't, naturally you are not going to be able to use up the land as fast as you anticipated.

Q Prior to January 10th, 1962, did Stonehedge

Development have a record of developing a certain number of lots?

A Yes.

Q What was that?

A We developed from 1955 to 1962, we developed approximately between 90 and 125 per year.

Q Did any problems actually occur in the development by Stonehedge -- once Stonehedge bought the property on January 10th, 1962, did any problems develop?

A Yes.

Q What were they, please?

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A In the latter part of 1962, when we petitioned the town of Van Buren as we usually do every year or two for zoning of the parcels that are in question here, the five parcels, they set up higher standards of what they expected from us as far as size of lots is concerned.

Q Could you give us an example, please?

A Yes. In other words, we bought the -- when we

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purchased the farms, and we expected a certain cost factor of land, and cost factor of developing, and a certain figure where we are going to be able to sell the lot, and this is all based on the number of lots which we are going to be able to get out of an acre, and the minute the town zoned it to -- for example 100 X 200 lot, rather than 70 X 135, you naturally cut down the number of lots that you will get on an acre, and by doing so, it was just phobitable to be able to develop or uneconomical to do it, and keep competitive.

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Q Were there any other problems during that time, besides the zoning problem?

A In 1962 -- in the latter part of 1962, the State of New York was talking about putting a new highway running between Exit 39 of the throughway, and Baldwinsville, known as the Baldwinsville by-pass, and we were informed that possibly they were going to go through our property. And, the town of Van Buren officials, in discussing our zone change were very reluctant to -- to do anything.

Q Did the Stonehedge Development Corporation take any action against the town of Van Buren with respect to the zoning problem?

A Yes, we appealed on thre' different occasions
to get the zoning changed to what we felt was necessary,
and we got turned down on three occasions, and then we appealed

it to the Courts, and through many of the maneuvers and time delays, which last some three years, we finally reached a settlement with the town.

- Q That was about what year?
- A 1965.

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- Q Were principal payments made on this Stonehedge Development Corporation mortgage during the years 1967, 1968 and 1969?
 - A No.
 - Q Why?

A We were not able to make principal payments, the property wasn't being used, and therefore we just weren't using it. It was just a dormant situation.

- Q Because of the problems?
- A Because of the problems, marketing condition --
- Q Why didn't the partnership foreclose on the property?

A It is pretty difficult to have the partnership, who is holding a second mortgage foreclose when we had people holding first mortgages, they were going along, very sympathetic to the problems of the town and the marketing, -- and we weren't receiving any flak whatsoever from the people going to foreclose on the first mortgages, so naturally it wasn't a nice thing to foreclose on the second.

Q As of this date, October 1st, 1973, are there

1	any balances outstanding on the Stonehedge Development
2	Mortgage of \$1,122,850.00?
3	Λ Νο.
+	Q How was the mortgage paid off?
5	A On March 14, 1972, I believe, Stonehedge Develop-
"	ment Company sold approximately 115 acres, and paid the
7	partnership approximately let me get my notes out
8	paid the partnership \$223,756.00.
9	Q And, how was the Folance of the mortgage paid
0	off?
1	A \$899,094.00, which is the balance between the
2	total mortgages due to the partnership of \$1,122,850.00
3	was paid by foreclosure to us.
4	Q The partnership foreclosed?
5	A Foreclosed on the balance.
6	Q Do you have the original?
7	A Yes. The closing statement?
A	Q The closing statement and the deed
9	MR. CHINI: With the Court's permission I would
2()	like to substitute xerox copies for these three documents,
21	the mortgage settlement statement, the certified copy of
2-)	resolution and consent, and the deed from Stonehedge Develop-
2.3	ment Corporation to the partnership?

THE COURT: Yes, you may substitute photostated copies, as long as they are good copies and legible.

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1	THE WITNESS: Yes, they are.	
2	THE COURT: Yes, very good.	
3	(Pause.)	
4	MR. CHINI: As Petitioner's I would like	
5	to have these marked for identification.	
6	THE COURT: You are having the photostated copies	
7	marked right?	
8	MR. CHINI: Right.	
9	THE CLERK: Petitioner's Exhibits 45, 46 and	
10	47 marked for identification.	
11	(Pause.)	
12	BY MR. CHINI: (Resuming)	-
13	Q Mr. Cappuccilli, will you please identify these	
14	particular documents, petitioner's Exhibit number 45, 46	
15	and 47?	-
16	A It's a closing	-
17	Q Read off the Exhibit number in order?	
18	A Exhibit number 45 is the closing statement	-
19	from the mortgager, Stonehedge Development Corporation to	
20	the mortgagees the partnership.	
21	Q Would you read out	-
22	A And, the mortgages due on the mortgages,	
23	\$1,122,850.00, paid \$233,756.00. Balance due the mortgagees	5
24	is \$899,094.00, and this was the mortgage balance, which was	
25	paid by foreclosure in full satisfaction of the mortgage.	

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Next is the deed -- the 14th day of March, 1972, conveying the property from Stonehedge Development Corporation to Cappuccilli, Cappuccilli and Paduano, and recorded -- and this conveyance is made in full satisfaction of all mortgages held by grantees on the premiss described herein, and it was recorded, page 2495 -- book 2495, page 834.

Exhibit 47 is a certified copy of resolution and consent.

Q Of which corporation?

A Stonehedge Development Corporation authorizing this foreclosure.

THE COURT: Off the record.

(Whereupon, a brief off the record discussion was held at the bench.)

THE COURT: You better say that again.

MR. STEELE: Your Honor, I have no objections to these being admitted into evidence.

THE COURT: They will be received in evidence.

(Pause.)

BY MR. CHINI: (Resuming)

Q On the foreclosure just discussed about how many acres did the partnership receive?

A 300 acres more or less.

Q In your opinion what was the fair market value of the property received on the foreclosure?

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1	A The fair market value of the property received
2	on both foreclosures was approximately \$900,000.00.
3	Q And, how did you arrive at that opinion of
4	\$900,000.00?
.5	A Well, the
4	Q For the 300 acres?
7	A The property was from the time of purchase,
8	approximately ten years, a normal appreciation over that
9	period of time, approximately ten percent a year, or
10	thereabouts, and the comparables of a piece of land of
11	this type, and size, was \$3000.00 per acre.
12	Q When you sold the property to Stonehedge back
1:3	in 1962, approximately what was the value per acre?
1.1	A Approximately \$1500.00 per acre.
15	Q I need the original of the closing statement.
16	THE COURT: Let's go off the record.
17	(Whereupon, the hearing in the above case
18	went off the record.)
19	MR. CHINI: I have a closing statement, a
20)	bond and mortgage and a deed, and I would like to substitut
21	copies, however I notice I do not have a copy of the deed,
22	but the mortgage recites the description of the property
23	in the deed. In other words I wonder if it would be

permissible to put into evidence -- the -- substitute the

bond and mortgage and the closing statement, and keep the

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	1	deed?
	2	THE COURT: If it is to your satisfaction, I
	:3	assume that the Respondent's counsel has no objections.
	4	MR. STEELE: I have no objection, Your Honor.
	5	THE COURT: All right, they will be received
	6	into evidence. The mortgage will be Exhibit what?
*905	7	THE CLERK: Petitioner's Exhibit 48.
	8	THE COURT: Well, identify them as they are
	9	marked please? What are we marking as 48 now, what
	10	are we doing for the record?
	11	(Pause.)
	12	MR. CHINI: It is a closing statement between
	13	Gerald Paduano, one of the partners, and the two other
	14	partners, when they purchased out his interest.
	15	THE COURT: And, you are marking that as Exhibi
	16	what?
	17	MR. CHINI: 48.
	18	THE COURT: All right.
	19	
	20	MR. CHINI: And, there is a bond and mortgage to cover the closing of the sale of his one-third interest to
	21	the other partners.
	2:2	
		THE COURT: And, you are marking that as what?
23	23	THE CLERK: Petitioner's Exhibit 49.
	24	THE COURT: Pardon?

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THE CLERK: 49, Your Honor.

THE COURT: Exhibit 49. Both of these documents are received in evidence.

BY MR. CHINI: (Resuming)

Q Mr. Cappuccilli, would you please describe the closing statement, which is Petitioner's Exhibit 48?

A The closing statement from Gerald F. Paduano, to Peter L. and Rocco M. Cappuccilli, conveying his undivided one-third interest in property to owners of other undivided two-thirds interest in consideration of a purchase money mortgage covering the property conveyed for full value of his interest, \$299,698.00, dated March 14th, 1972.

Q Will you please identify the bond and mortgage, Petitioner's Exhibit 49?

A The bond and mortgage is from -- between Peter L. Cappuccilli, Rocco M. Cappuccilli, the mortgagees, -- the mortgagers, and Gerald F. Paduano, as the mortgagee, the sume of \$299,698.00.

Q Was the book and page number of the mortgage recorded?

A No, this is the original.

MR. CHINI: Any objection to that?

 $$\operatorname{MR}$.$ STEELE: No, objection, Your Honor, but I would like to have copies.

MR. CHINI: Oh, sorry, here you are. I ran out of my copies --

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THE WITNESS: Yeah, I've got them here, how many do you want?

MR. CHINI: Well, give him two --

(Pause.)

MR. STEELE: Your Monor, if Mr. Chini needs the deed in at a later time at some point, I'd be glad to keep the record open for putting the deed in if he feels it necessary, I don't --

MR. CHINI: Well, just for the record the deed was recorded from Gerald Paduano to the other two partners.

THE COURT: Yes, it's recorded, I see. For the record, when the Witness said, this is it, you were holding up something, what --

THE WITNESS: The mortgage

THE COURT: The mortgage?

THE WITNESS: Right.

THE COURT: This bottom mortgage, that's

Exhibit 49?

THE WITNESS: That's right, sir.

THE COURT: All right, fine.

(Pause.)

BY MR. CHINI: (Resuming)

Q IN March of 1972, Mr. Paduano, the one-third owner of the partnership of Cappuccilli, Cappuccilli and

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1	Paduano,	sold his one- third interest on the foreclosed
2	property	to you and your brother for a consideration of
3	\$299,698.	00?
4	Λ	Yes.
5	Q	With respect to the Henderson farm, did the
6	partnersh	ip ever acquire the Henderson farm?
7	A	Yes.
8	Q	What date, do you recall?
9	A	The option was December 7th, 1959, and the
10	date of c	closing was March the 8th, of 1960?
11	Q	What did they pay for the property?
12	A	\$125,460.00.
1:3	Q	What was the purpose of acquiring the property?
14	Λ	Speculation and investment.
15	Q	They did they ever intend to develop the
16	property?	
17	Α	No.
18	Q	With respect to the five farms just mentioned,
19	in the Sc	eneca Knolls property, what was the purpose of the
20	partnersh	ip acquiring these properties, the five farms?
21	Λ	The purpose was to for speculation and
).;	investmen	t.
23	Q	Did you ever intend to develop the
24	Α	No, we didn't.

Did the partnership ever dispose of the Henderson

1	farm?		
2	Λ	Yes.	
.3	Q	When was that and to whom?	
4	A	It was disposed of on February 20th, 1961.	
5	Q	To whom?	
6	Λ	To Stonehedge Development Corporation.	
7	Q	What was the selling price?	
8	A	\$216,500.00.	
9	Q	Do you know the terms the assumption of	
0	mortgage of	r down payment made, do you recall?	
1	A	The there was a down payment	
2		(pause.)	
3	Λ	Yes, there was it as a mortgage assumption	
4	of \$107,00	0.00. There was a down payment of \$28,000.00	,
5	and there	was a purchase money mortgage for \$81,000.00.	
6	Q	That the partnership received from Stonehedge	?
17	Λ	Right, from Stonehedge.	
9	Q	What was the fair market value of the Henders	on
2()	farm on Fel	bruary 20th, 1961?	
21	Λ	\$175,000.00.	
	Ó	Now, vou paid \$125,000.00 approximately two	
2.7	years ago,	before that time, how did you arrive at the	
23	figure \$17	5,000.00?	
. 1	Α,	Well, the factor of appreciation during the t	ime

that we purchased it and the time that we sold it, and

secondly because it was part of the aggregate of these different farms that we were assembling, and upon getting the farms all as one package, naturally the value of all of the farms becomes approximately the value of the most expensive farm that -- that we purchased, which was according to the fair market value at that time.

Q The farm sold for \$216,500.00, and you say that the fair market value was \$175,000.00, what's the difference?

- A Interest.
- Q Was an interest factor built in on the price?
- A Yes.

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Q How did you --

MR. STEELE: I -- I don't believe that I heard him say what the fair market value of the property was?

THE WITNESS: Right, \$175,000.00.

MR. STEELE: Thank you.

THE COURT: \$175,000.00.

BY MR. CHINI: (Resuming)

Q What did you consider your equity in the property, the fair market value was \$175,000.00, you had a mortgage on it, and there was a down payment, what did the partnership consider its equity --

A Well, the down payment -- the sum -- the total sum of the down payment, and the mortgages, subtract this

33

1	from the fair market value, and this would be the equity.
2	Q \$40,000.00 is the correct
.}	A Yes, \$40,000.00 \$41,000.00, that neighborhood,
4	right.
.5	Q And, in acticipating an interest factor on what
6	did you consider the interest to be?
7	A Well, we figured the interest on the equity.
8	Q On the \$40,000.00, and about what percent
9	interest factor did you consider?
10	A Between / and 8 percent.
11	Q On that transaction the partnership received
12	a mortgage, a purchase money mortgage of \$81,000.00,
1:3	please explain when this was paid, if ever?
14	A We received sometime in 1962, I believe,
15	about \$11,000.00, and the \$70,000.00 balance was part
16	of the settlement and foreclosure of last year.
17	Q Did the partnership ever acquire the Preston
18	farm?
19	A Yes.
20	Q Do you know when, what the terms were?
21	A Preston farm 19 date of purchase was
22	closed the 15th of April, 1961.
23	Q What was the purpose of acquiring the Preston
24	farm?

THE COURT: What farm, sir?

THE WITNESS: The Preston --1 THE COURT: Preston -- okay. MR. CHINI: It is not listed on the Exhibit, 4 Your Honor, it is in the stipulation. THE COURT: All right. THE WITNESS: The Preston farm was purchased to -- the land was to be used for a sewerage disposal plant, for the purpose of serving the entire acreage that we assembled. 10 BY MR. CHINI: (Resuming) 11 Q Did they ever dispose of the Preston farm, 12 the property? 13 Vos. A When and to whom? Q The property was sold to Seneca Sewerage Corporation, or half of it -- let's say, 20 acres of it was sold to the SEneca Sewerage Corporation, April 16th, 1961, 18 and the remaining -- the remaining acreage stayed in the 19 partnership. What was the selling price do you recall? 21 \$40,000.00. 22 And, what were the terms of the sale, how much 23 was paid down?

A \$5,000.00 down, they assumed a \$10,000.00 mortgage -- Seneca Sewerage Corporation assumed a \$10,000.00

42

When was the purchase money mortgage paid, if at

market value of approximately \$6250.00.

24

Q

a11?

- A The --
- Q The \$25,000.00?
- A It was paid in 1973.
- Q In full?
- A In full.
- Q With respect to the State appropriation, when did the partnership or Stonehodge receive notice that the State might take the property?
 - A In -- official notice, I believe it was 1965.
- Q Was it definite at that time when the taking would take place?
 - A No.
- Q Did the State specify the amount of land that it would be taking?
 - A No.
- Q When did the actual taking take place? By the State?

(Pause.)

- A March 20th, 1968.
- Q Do you know approximately how many acres the State took?
- A Yes, they totally took 49 or 50 acres, however they ruined some other acreage as well.
 - Q Was this State appropriation controversy tried

in the Courts? . 7 Yes. When was the Court decision finally resolved? Well, was that when the trial took place or A .5 the -ti THE COURT: Well, recite when the trial took place. 8 THE WITNESS: All right, the trial took place 9 in May of 1972, and the decision came out approximately 10 June of 1973. 11 BY MR. CHINI: (Resuming) 1:2 When was the highway completed? 1:3 The highway was completed in 1971. 14 What effect did the State taking make on the 15 plans for Stonehedge Development Corporation? 16 A From the time that the highway first was 17 mentioned in the newspapers, in 1962, the latter part of 18 1962, it made a big factor in the thinking of the town 19 fathers, and town planners, and made it very difficult 20 for ourselves to get any zoning change, which was part of 21 the problem as I mentioned earlier, and from that day on, 22. it was very difficult, because it was never pinned down 23 to exactly where they were going to be, until 1968. 24

Q I see. In view of the disruption in the plans for Stonehedge, what if anything did the partnership do?

	Peter Cappuccilli, a Petitioner, Direct.
1	A The partnership continued to try to get
:2	! don't
:3	Q Well, for example, because Stonehedge now could
4	
.,	partnership do if anything?
6	A We just went along with the corporation's
7	inability to perform, and and pay, and waived the payments.
X	Q Well, in March of 1972, was there a foreclosure?
()	A In March of 1972 we did foreclose.
10	Q And, what happened to the corporation?
11	A The corporation is being dissolved.
12	Q Why is that?
<i>U</i> :	A Stonehedge Development Corporation has no use
15	and function to us any longer, and the foreclosure was a
16	big part of it, the condemnation of the properties that
17	the State took over was the transaction necessary by
18	the corporation. It is not in the business any longer.
19	Q During the tax years 1967, 1968 and 1969,
20	the partnership made certain advances to Stonehedge Develop-
21	ment Corporation, Seneca Sewerage, and Cappy's Real Estate,
	were these advances made without interest?
23	A Yes.
24	Q What were the purposes of the advances?
25	A The purpose of the advances was to enable

Stonehedge Development Corporation to pay their obligations,

1	some of which were the first mortgages on the property,
2	we loaned them money, or for whatever purposes necessary
3	to keep alive.
4	Q Were you able to borrow from the banks?
5	A Stonehedge Development Corporation wasn't able
6	to really borrow from the bank at that time.
7	Q What about the other companies, Seneca
8	Sewerage and
9	A (Shakes head no.)
0	Q Okay, were the advances finally paid off?
1	A Yes.
2	Q Could you tell us when?
:3	A I can't stipulate exactly when, but they were
1	all short term
5	Q As of now they are all paid off?
6	A As of now they are all paid off, yes. They
7	were all short term borrowings.
,	MR. CHINI: I have no more questions, Your
)	Honor.
)	THE COURT: You may cross examine.
1	CROSS EXAMINATION BY
,	MR. STEELE:
3	Q Mr. Cappuccilli, you testified that you
1	when you purchased the Preston farm, that the mortgage

-- when the partnership purchased the Preston farm, it got

	Teter Cappuccini, a Petitioner, Cross.
1	mortgage from the seller, that was without interest?
2	A No, that was the Patterson farm, sir.
3	Q Oh, I'm sorry, the Patterson farm. All right,
4	now,
ā	(Pause.)
6	MR. STEELE: I would like to have this marked
7	for identification.
8	
1207 9	THE CLERK: Respondent's Exhibit AR marked for identification.
10	
11	BY MR. STEELE: (Resuming)
12	Q Would you identify that, please? Just leaf
	through it so that you can see what it is.
13	(Pause.)
14	Q Can you identify this for me?
15	A Yes, it is a letter from Victor Chini, the
16	attorney, to the District Director of Internal REvenue,
17	in regards to the Cappuccilli, Cappuccilli, and Paduano
18	case.
19	Q And, on page
20	THE COURT: What's the date of the letter?
21	MR. STEELE: The date of the letter is August
22	11th, 1971, and Your Honor, this is what we commonly refer
23	to as a protest, and you said that
24	
25	THE WITNESS: I'm a partner, and I understand
	it.

	coor cappacenn, a retitioner, cross.
1	BY MR. STEELE: (Resuming)
2	Q Now, in reading your statements, do you not
3	say that there was no agreement oral or otherwise providing
4	that the partnership charged interest on these obligations?
5	A That's right, that was with regard to the
6	Q Answer the question
7	MR. STEELE: I would like to offer this into
8	evidence, Your Honor.
9	THE COURT: Any objection?
10	MR. CHINI: I would like the opportunity for
11	my client to mention
12	THE COURT: Well, you will have him on cross
1:3	examination
14	MR. CHINI: Then no objection, Your Honor.
15	THE COURT: It will be received in evidence.
16	You will have him on redirect examination.
17	(Pause.)
18	MR. STEELE: I would like to have this marked
19	for identification, please?
20	THE CLERK: Respondent's Exhibit AS marked
21	for identification.
22	MR. STEELE: Thank you.
23	BY MR. STEELE: (Resuming)
24	Q I show you this, and ask you if you can identify
25	that?
DESCRIPTION OF	

1249.

** 1254

1	MR. CHINI: Can I have a copy of that?
2	MR. STEELE: Yes.
:}	(pause.)
4	MR. CHINI: What was this Exhibit?
5	MR. STEELE: AS.
6	(Pause.)
7	BY MR. STEELE: (Resuming)
8	Q Will you please identify that document?
9	A It is a letter from Victor Chini on October
0	the 11th, to the District Director, in regard to myself
1	and my wife, and it is in protest against the adjustments
2	and support there the following facts.
3	Q All right, thank you.
4	MR. STEELE: Your Honor, I offer this into
5	evidence.
6	THE COURT: Any objections, Mr. Chini?
7	MR. CHINI: I don't know if I have got a
8	complete Exhibit, Your Honor.
9-	(Pause.)
1	THE COURT: Any objection?
	(Pause.)
3	MR. CHINI: None.
1	THE COURT: With no objection, it will be
5	received into evidence.
	MR. STEELE: Thank you. Would you please mark

**1288

1	this for identification?
2	THE CLERK: Respondent's Exhibit AT marked for
** 1290 ³	identification.
4	BY MR. STEELE: (Resuming)
5	Q I show you Respondent's Exhibit AT for identifi-
6	cation, and ask you if you can identify that document?
7	(Pause.)
8	Q Can you identify that document?
9	A It is a letter from to the District Director
10	of the INternal REvenue in regard to Stonehedge Development
11	Corporation, protesting
12	THE COURT: Written by whom?
13	THE WITNESS: Protesting its written by
14	Victor Chini
15	THE COURT: All right.
16	THE WITNESS: Submitted by him
17	BY MR. STEELE: (Resuming)
18	Q And, you signed that as President of the
19	A President of the corporation.
20	Q All right, fine, thank you.
21	THE COURT: Are you offering this into evidence?
22	MR. STEELE: Yes, Your Honor, I am.
23	THE COURT: Any objection?
24	MR. CHINI: None.
** 1314 ²⁵	THE COURT: It will be received in evidence.

	oupputtin, a retitioner, cross.
1	BY MR. STEELE: (Resuming)
2	Q Now, in any of these protests is there any
3	statement contained therein of the facts to the effect that
4	interest was taken into consideration in arriving at the
5	sales price?
6	Λ Not that I know of.
7	Q Did
8	THE COURT: Not that he knows of, he said.
9	MR. STEELE: Right I want to make sure that they
10	got that.
11	BY MR. STEELE: (Resuming)
12	Q Did you discuss the sales of these farms with
1:3	other people?
14	A Other than my partners, you mean?
15	Q Yes?
16	A No.
17	Q You
15	A I don't know who he would.
19	Q Well, what I was referring to, you said
50	you said you learned about all this from accountants and
21	lawyers, as a general rule, and I wanted to know, did you
22	discuss these particular transactions, which are involved
23	in this case, back in 1960 or 1961, with any attorneys or
24	accountants?
25	A With our attornovs and a

With our attorneys and accountants at that time,

	reter Cappuccilli, a Petitioner, Cross.
1	yes.
2	Q And, are those people alive?
3	A I believe that they are, however they are not
4	representing me at this time.
5	Q And, you know where they are?
6	A Not not in particular.
7	Q All right. These are the mortgages which are
8	involved, did you record these mortgages in the County
9	Clerk's Office?
10	MR. CHINI: Can you be more specific?
11	BY MR. STEELE: (Resuming)
12	Q Yes, I'm referring to the to the one property
1:3	which was called the Seneca Knolls property, did you record
14	that mortgage for \$1,075,000.00?
15	A The \$1,075,000.00 mortgage in total was not
16	recorded, however
17	Q That's all that you need to say. Just answer
18	the question.
19	Did you record the mortgage on the Henderson
20)	property?
21	(Pause.)
)•)	A No.
2:3	Q All right. Now, you mentioned that the State
24	condemmed the portion of your land, of this property, I wish
25	that you would take the Court's Exhibit, and also my Exhibit,

1	and, maybe Mr. Chini's Exhibit and mark take a pen or
2	a pencil or something, and draw out the property approxi
:}	mately, the property that was taken by the State of New
4	York?
5	A It was taken approximately the distance between
6	these two dotted lines, where it crosses each of these
7	dark areas.
8	THE COURT: Well, what we I'm going to draw
9	a circle around it there, is that right?
()	THE WITNESS: That's right. All right, and all
1	of this.
2	THE COURT: All right, there are three circles
3	in black ink
4	MR. STEELE: But just
5	THE COURT: On the parts that the petitioner is
6	talking about.
7	MR. STEELE: All right, thank you.
,	THE COURT: And, that's on Exhibit 44.
9	MR. STEELE: 44.
)	THE COURT: Right.
1	BY MR. STEELE: (Resuming)
·	Q Now, was there a condemnation suit involved in
3	this taking by the State of New York?
1	A Yes

...

Q And, how much did the State pay you for taking that amount of land?

	, , , , , , , , , , , , , , , , , , , ,
1	A The total payment on the award was approximately
2	\$240,000.00. That is both for the taking and the conse-
3	quential damages.
4	Q All right, fine. Now, when you had this
5	condemnation proceeding, this was an actual trial wss it
6	not?
7	A Yes.
8	Q And, did you have an expert testify with respect
9	to the value of this?
0	A Yes.
1	Q Property, and what did he testify to with respect
2	to the value of this property at the time of the taking?
3	A Ah
4	THE COURT: Are you talking about per acre or
5	
6	MR. STEELE: The total value the total value.
7	THE WITNESS: The total value, which included
8	the taking and the consequential damages, I believe it was
9	a \$1,600,000.00.
()	BY MR. STEELE: (Resuming)
1	Q Did you have any idea what the can you give us
)	a breakdown between the taking and the consequential damages
3	A I don't remember.

There would have been one though, wouldn't there?

Yes, I believe so, but I am not that familiar with

25

1	it.
2	Q And, do you have anything in your records up
:3	here today that would indicate what those were?
4	A No, no, I don't.
5	Q Do you know if either your brother, Rocco, or
t _i	Gerald Paduano have real estate brokerage licenses in the
7	State of New York?
s	Λ Yes, they both have.
9	Q And, Gerald Paduano is your brother-in-law, is
10	he not?
11	Λ No, sir.
12	Q .low is he is he related to you in any manner?
13	A He is a cousin, a distant cousin.
14	(Pause.)
15	MR. STEELE: Your Honor, for the record, I
16	I think that we better change our paragraph 2 of the stipu-
17	lation, because the stipulation does say that Caroline
18	Paduano is your sister, I thought she was your sister, she
19	is not your sister? Can, we just
20	THE COURT: Yes,
.1	MR. STEELE: I had something in my files that said
1-)	she was that's why I put it in, so, with the Court's permission
2:3	we'll just strike that line out, and put in that he is a

THE COURT: I think that you better correct it

2.5

1	in pen and ink though, on the court's copy too?
2	MR. STEELE: Right.
3	THE COURT: Right.
4	MR. STEELE: I apologize to the Court.
5	MR. CHINI: What paragraph is that?
6	MR. STEELE: Paragraph 2 of the stipulation
7	the last sentence.
8	MR. CHINI: I see. Put Gerald Paduano is a
9	distant cousin, is that all right?
10	MR. STEELE: Fine, that's what he testified
11	fine.
12	THE COURT: And, change the original too.
13	MR. STEELE: Yes, Your Honor, could we do that
14	immediately after the
5	THE COURT: All right give that to the
6	Respondent's counsel, please.
7	Off the record.
8	(Whereupon, the hearing in the above was
9	taken off the record.)
()	THE COURT: The correction has been made on the
1	original.
2	MR. STEELE: I have no further questions.
3	THE COURT: Anything further?
1	REDIRECT EXAMINATION BY
5	MR. CHINI:

Q Mr. Cappuccilli, when Mr. Steele asked you about the mortgages not being recorded, regarding the Seneca Knclls and the Henderson property, could you please explain why?

A Yes. We prepared at that time alternate mort-gages, \$1,075,000.00 in one instrument. We also prepared five separate instruments, totalling the \$1,075,000.00 in the event that we had to record them for the purposes of financing, or borrowing money, and could offer them as collateral.

Q I see, if you were going to offer -- going to go to the bank to borrow money, and only a portion of the total property was going to be refinanced, you'd file the one mortgage, and then you would borrow on it?

A Now, what I mean is, we are -- if we were going to borrow money, we would use part of it for collateral, security, part of the \$1,075,000.00. If we recorded the entire \$1,075,000.00, we have a tremendous mortgage tax to pay, and recording fees, so we divided it up both ways in the event that it was needed. And, at one time, we did record one of the farms in the Courthouse, and paid the tax, and that was the Kamain (phonetics) farm, which was \$354,000.00, I believe, is the mortgage of the one \$1,075,000. And, that was recorded in the Onondaga County Clerk's Office.

Q Do you know approximately what the mortgage rates

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	out outputtern, a retitioner, frectoss.
1	are for filing in the County Clerk's Office?
2	A Three quarters of one percent.
3	Q And, the purpose of not recording was to save
1	money?
5	A Absolutely.
6	Q All right.
7	MR. CHINI: No further questions.
8	THE COURT: All right, you can anything further
9	Mr. Steele?
0	MR. STEELE: I have I just have one question.
1	RECROSS EXAMINATION BY
2	MR. STEELE:
3	Q You broke down the \$1,075,000.00 mortgage on
1	all the farms?
5	A Yes.
6	Q And, you said that the Kamain farm was \$336,540.00
7	A I think that it is \$354,000.00, I'm not positive
3	at this point, but it I think that I have got some infor-
9	mation in here that I could find that would give me the
()	exact figure, but it was in that neighborhood.
1	MR. CHINI: He was just using an example.
2	THE WITNESS: Yes.
3	BY MR. STEELE: (Resuming)
4	Q But there were values set on each of the other
5	properties

	i i , i , i
1	Λ Oh, absolutely.
2	Q And, if you needed it, you were going to do it
3	that way?
4	A Oh, absolutely, that would total it, right.
5	MR. STEELE: No further questions.
6	THE COURT: All right, you may step down, thank
. 7	you very much.
8	(Witness excused.)
9	THE COURT: We are going to recess for five
10	minutes. Are you halfway through Mr. Chini, or more than
11	halfway through
12	MR. CHINI: Two-thirds, Your Honor. I just
13	have a little bit
14	THE COURT: Oh, I see, we'll recess for five
15	minutes.
16	THE CLERK: Rise please.
17	(Whereupon, the hearing in the above was recessed
18	at 1:00 as described above.)
19	THE CLERK: Please be seated.
20	MR. CHINI: I have one more witness, Your Honor.
21	THE COURT: All right, you may call him.
	(Pause.)
23	THE CLERK: You do solemnly swear that the testi-
24	mony you are about to give to the Court in these cases, will
25	be the truth, the whole truth, and nothing but the truth,
	and nothing but the truth,

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1	so help you God?
2	THE WITNESS: I do.
:3	THE CLERK: Would you state your name and
4	address for the record?
5	THE WITNESS: Paul Kiniry, 201 Meadow Drive,
6	Syracuse, New York.
7	THE CLERK: Could you spell your last name,
8	please?
9	THE WITNESS: K-i-n-i-r-y.
10	THE CLERK: K-i-n
11	THE WITNESS: I-r-y.
12	THE COURT: You may take the stand.
1:3	THE WITNESS: Thank you.
14	PAUL KINIRY, called as a witness on behalf of
15	the Petitioners, having been duly sworn, took the stand
16	and testified as follows:
17	DIRECT EXAMINATION BY
18	MR. CHINI:
19	Q Mr. Kiniry, what is your profession?
20	A A certified public accountant.
21	Q How long have you been in the public accounting
.).)	field?
23	A Approximately 15 years.
24	Q By whom are you employed presently?
25	A Haskins and Sells.

1	Q Are they certified public accountants?
2	Λ Yes.
3	Q Would you please give us your educational back-
4	ground? Which colleges
5	Λ I attended Mount St. Mary's College and the
6	University of Pennsylvania.
7	Q And, what degree did you get?
8	A Bachelor of Science, in business administration
9	Q And, in your experience in public accounting,
10	have you had occasion to compute interest?
11	A Yes.
12	(Pause.)
1:3	MR. CHINI: Your Honor, I have a book that I
14	would like to use in evidence, and I have xerox copies of
15	the pertinent pages that we are going to use, if counsel ha
16	no objection, I would like to
17	MR. STEELE: No objection
18	MR. CHINI: It is the Accountants' Handbook.
19	MR. STEELE: Would you read in the record, what
20	that
21	MR. CHINI: Accountants' Handbook of Formualas
22	and Tables, by Lawrence Lipkin, Irwin K. Feinstein, and
23	Lucile Derrick, published by Prentice Hall, Inc.
24	THE COURT: And, what date is the copywrite?
25	MR. CHINI: 1963 copywrite date.

1 THE COURT: That's the original printing? MR. CHINI: Yes. THE COURT: All right. All right, you have no 4 objections to substituting the photostated copies? MR. STEELE: No. 6 THE COURT: It will be marked as Petitioner's Exhibit --MR. CHINI: 50, Your Honor. 9 (Pause.) 10 THE CLERK: It's 50? 11 MR. CHINI: 50. 12 THE CLERK: Consisting of two pages? 1:: MR. CHINI: Yes. 14 BY MR. CHINI: (Resuming) 15 Q Mr. Kiniry, is this book that we have just 16 referred to a recognized tax and accounting profession for 17 computing interest? 18 . A Yes. 19 Did you at my request compute the interest factor, 20) what it would be on \$400,000.00 for a 12 year period, 21 assuming no principal or interest payments during that inter-200 val, and the final payment at the end of the 12 year period 23 was \$1,075,000.00?

A Yes.

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Q What interest factor did you arrive at?

	Torrect.
1	A Approximately 8 1/2 percent.
2	Q And, how did you compute that, would you please
:}	explain?
4	A From the tables
5	Q Would you tell the table, page number, etc?
ti	A Page 174, a 12 year period at 8 1/2 percent,
7	2.6616 x \$400,000.00, would equal approximately 1,064,000,
8	which would be the approximate interest rate would be
9	8 1/2 percent.
10	Q Would you read out that figure complete, 1,064 -
11	what?
12	A \$1,064,674.00.
13	Q Right.
1.4	THE COURT: That's \$1,064,674.00.
15	MR. CHINI: Right.
16	BY MR. CHINI: (Resuming)
17	Q If the total payment of \$1,075,000.00 were made
18	before the 12 year period, what effect if any would that
19	have on the interest rate?
20	A The interest rate would be greater.
21	Q Of paying it off in a shorter period of time
2:2	the same total amount?
2:3	A Right.
24	Q Did you at my request compute what the interest
25	factor would be on \$29,000.00 for a 12 year period assuming

no principal or interest payments made during that time, 1 and at the end of the 12 year period, a total of \$70,000.00 :3 was received? 4 A Yes. What was the interest factor? 0 Λ Approximately 7 1/2 percent. And, how did you arrive at it please? 0 Page 174, 7 1/2 percent interest for 12 year period, 2.31817 x \$29,000.00, would equal \$69,072.00. 10 Q Did you at my request compute what the interest 11 factor would be on \$6,250.00 for a 12 year period assuming 12 no principal or interest payments made during that time, 1:3 and a total of \$25,000.00 was paid at the end of the 12 14 year period? 15 Λ Yes. 16 0 What was the interest factor? 17 A Approximately 12 percent. 0 And, how did you arrive at it please? 19 That would have been page 172, an interest factor 20 of 6 percent would equal 2.0121, doubling that would be 21 equal to 12 percent, and the multiplication would come to .).) \$25,150.00.

MR. CHINI: No further questions, Your Honor.

THE COURT: Any cross examination?

MR. STEELE: Yes, just a couple of questions.

2:3

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1	CROSS EXAMINATION BY
2	MR. STEELE:
:3	Q Mr. Kiniry, are you the taxpayer's regular
4	accountant? Is your firm the taxpayer's regular account-
.5	ant?
6	A Yes, now we are.
7	Q And, how long have you been the regular
8	accountant?
9	Λ Ah approximately five years.
10	Q And, were you at all related to this Testone
11	Accounting firm?
12	A Yes.
13	Q And, you were with Testone when they merged with
14	Haskins and Sills?
5	A That is correct.
6	Q Were you the partnership's accountant during
7	the period that Testone was handling the work?
S	Λ Yes.
9	Q And, did you represent Mr. Cappuccilli, and or
(1)	the partners and the partnership at any time before the
1	Internal Revenue Service in this case before it came over t
.2	Mr. Chini?
:3	A Yes, in the initial examination.
5	MR. STEELE: Thank you, that's all.
.)	THE COURT: Anything further from this witness.

Minutes of Hearing, dated Oct. 1, 1973. Discussion.

1	You may step down, thank you very much.
2	* (Witness excused.)
3	THE COURT: Oh, Mr. Chini, if you will offer
4	Exhibit 50 now, I will receive it, since there is no objec-
.;	tion. You are offering Exhibit 50?
6	MR. CHINI: Yes, sir, I'm offering
7	THE COURT: It will be received in evidence.
8	MR. STEELE: No objection, Your Honor.
9	THE COURT: All right. Thank you.
10	(Pause.)
11	MR. CHINI: With respect to the briefs, Your
12	Honor, we would like to
13	THE COURT: Oh, are you resting?
14	MR. CHINI: Yes, Your Honor.
15	THE COURT: And, you are resting?
16	MR. STEELE: Yes, Your Honor.
17	THE COURT: All right, then, gentlemen, the case
18	stands submitted, what time do you wish for briefs for
19	the filing of briefs?
20	MR. STEELE: We would like 60 and 45 days, if
21	possible, Your Honor.
.3.3	THE COURT: I'll give you 60 and 30.
23	MR. STEELE: Well, the problem with 30 is that
24	it is right during the
25	THE COURT: Well, I will give you 35 then, that

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Minutes of Hearing, dated Oct. 1, 1973. Discussion

	Discussion.			
1	that will do it.			
2	MR. STEELE: All right, fine.			
:}	THE COURT: What are those dates, Mr. Clerk?			
4	60 days from today would be October November 30			
.5	THE CLERK: November 30th, yes, Your Honor.			
6	THE COURT: November 30th.			
7	THE CLERK: For original briefs.			
8	THE COURT: And, Januaryit's Januar 6th			
9	or 7th.			
10	THE CLERK: January 7th, which is a Monday.			
11	THE COURT: January 7th, all right. Fine,			
12	gentlemen, thank you very much. The case stands submitted,			
13	and we'll adjourn at this time.			
14	MR. CHINI: Fine, I would like to submit a			
15	xerox copy of the deed from Gerald Paduano to the Rocco and			
16	Peter L. Cappuccilli.			
17				
18	and, you have no objections?			
19	MR. STEELE: No objections. THE COURT: It will be received in aviden.			
20	THE COURT: It will be received in evidence as Exhibit 51, is that right?			
21				
.3.1	THE CLERK: 51, Your Honor.			
23	THE COURT: All right, fine, so it's received,			
24	mark and stamp Exhibit 51 stamped and received into evidence.			
25	MR. CHINI: Your Honor, could the record be			
	held open until a certain date?			

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Minutes of Hearing, dated Oct. 1, 1973. Discussion.

THE COURT: It -- can you submit it within 1 ten days, Mr. Chini? ., MR. CHINI: Fine, yes, Your Honor. MR. STEELE: I say, I can run up and run it off 4 right now, if you are going to be here for a moment? THE COURT: Oh, the Clerk will receive it as ti soon as you bring it down. MR. STEELE: Are you going to be here for awhile? MR. CHINI: Yes. 9 THE COURT: Then, we'll close the record as 10 of today, after that Exhibit is received. 11 MR. CHINI: Thank you, Your Honor. 12 THE COURT: Oh, do you have the original there? 13 11 MR. CHINI. Yes -- it's the original, right. He said that he would xerox them now. 15 16 THE COURT: All right, fine, we'll have the original stamped in evidence, and then we will allow you to 17 substitute photostated copies, so if you will offer it now, 18 19 Mr. Chini, as exhibit 50 --20 THE CLERK: 51 --21 THE COURT: 51, w.'11 receive it in evidence .).) right now. It will be stamped in evidence, Mr. Clerk,

MR. CHINI: Thank you, sir.

and it may be withdrawn for the purposes of substituting

23

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photostatic copies.

Minutes of Hearing, dated Oct. 1, 1973. Hearing Adjourned.

THE COURT: Then the photostatic copy will have the Exhibit number on it. :: MR. CHINI: Thank you. THE COURT: All right, thank you very much, + gentlemen, the case stands submitted, and we'll adjourn. THE CLERK: Rise, please. ti (Whereupon, the hearing in the above was adjourned as described above.) 9

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147 Court Reporter's Certification.

UNITED STATES TAX COURT

Certificate of Transcriber

7103-72				
Docket No.	Name:	Gerald	Paduano,	et al
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NOTICE OF APPEAL.

UNITED STATES TAX COURT

GERALD F. PADUANO and CAROLINE PADUANO.

ROCCO M. CAPPUCCILLI and DOROTHY CAPPUCCILLI

PETER L. CAPPUCCILLI and GRACE A. CAPPUCCILLI,

Petitioners,

-VS-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Dockets No. 7103-72 7168-72 7169-72

NOTICE OF APPEAL

Notice is hereby given that the above named Petitioners hereby appeal to the United States Court of Appeals for the 2nd Circuit from the full decision of this Court entered in the above captioned proceeding on the 1st day of April, 1975 relating to income taxes for the years 1967, 1968 and 1969.

VICTOR CHINI Counsel for Petitioners 811 State Tower Building Syracuse, New York 13202

